UNIVERSITY OF PENNSYLVANIA

TRANSPORTATION IN NORTH CAROLINA

A STUDY OF RATE STRUCTURE AND RATE ADJUSTMENT

ROLAND B. EUTSLER

A THESIS

IN ECONOMICS

PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR
OF PHILOSOPHY

PHILADELPHIA
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PREFACE

The North Carolina rate adjustment and the relationship of its rates to other areas has been an important factor in the commercial development of the state. Much of the activity of the North Carolina Corporation Commission has been devoted to the effort of securing a more favorable adjustment and the problem has been almost constantly before the Interstate Commerce Commission.

Academic interest in the problem developed while the writer was a student at the University of North Carolina. Plans were evolved for a study of the causes of the North Carolina freight rate adjustment and it was undertaken under the auspices of the Institute for Research in Social Science of the University of North Carolina and later brought to its present form as a dissertation at the University of Pennsylvania.

The author acknowledges indebtedness to Dr. T. L. Kibler, formerly of the University of North Carolina and now at Ohio State University, and Dr. E. W. Zimmermann, of the University of North Carolina, for help and suggestions in formulating plans for the study. Indebtedness is also acknowledged for manuscript revisions by Dr. Katharine C. Jocher, Secretary of the Institute for Research in Social Science of the University of North Carolina, and for the work done by the secretarial staff of that organization. For practical assistance and advice, the author is indebted to Mr. J. W. Perrin, Assistant Freight Traffic Manager of the Atlantic Coast Line Railway, Mr. J. L. Graham, Traffic Manager of the R. J. Reynolds Tobacco Company, and Mr. C. G. Yates, Traffic Manager of the Vick Chemical Company. For guidance and constructive criticism in bringing the study into its present form, the author is indebted to Dean Emory R. Johnson, Dr. G. G. Huebner, and Prof. W. P. Raine of the University of Pennsylvania. The author expresses appreciation for the courtesy of the staff of the Interstate Commerce Commission in placing case files and other documents at his disposal and for the valuable manuscript assistance rendered by J. Marshall Gersting, H. R. Enslow, and A. D. Dawson, fellow-students at the University of Pennsylvania.

ROLAND B. EUTSLER.

University of Pennsylvania,
May, 1929.

INTRODUCTION

Interstate and intrastate transportation are essentially the same. No economic distinction can be made between them since they are parts of the whole service. The concurrent development of interstate and intrastate rate structures insures a close correlation between them. The level of the rates and the rate structure governing the rates on commerce within a state can not be considered as an isolated phenomenon nor can it be considered independently of the rate structure and rate level on commerce to and from the state. Significant changes in the one influence corresponding changes in the other or mal-adjustment results.

The situation and problem in North Carolina affords an excellent illustration of this condition. This study of the North Carolina rate structures and adjustments considers the relationship between the adjustment of rates to, from, and within the state. Discrepancies in these adjustments make it desirable that an attempt be made to trace the development of the several adjustments and to find the causes of the disparities since such disparities can be eliminated satisfactorily only if the causes for their existence can be found and removed.

The basic discrepancies in the adjustments are two-fold: (1) on a comparative basis, the rates to North Carolina are higher than the rates to Virginia cities, an adjacent and competitive area; (2) the rates within North Carolina are on a low level. People in North Carolina feel that the higher level of rates to their state is unreasonable and that it discriminates against them in favor of the adjacent area which enjoys lower rates. At the same time, the people in the Virginia cities feel that the low level of rates within North Carolina acts as a direct discrimination against them when they ship into the state.

Historically, the rates to and from North Carolina have been based upon the rates to and from the Virginia cities. General changes in the rate structure in Southern Territory have not been reflected by corresponding changes in the North Carolina adjustment. North Carolina has thus come to be grouped with an area which has a lower level of rates than applies to North Carolina. And while some reductions in the difference of the

rate levels to the two areas have been made, the disparity between them has never been fully eliminated.

On the other hand, the rates within North Carolina have always been upon a low level. Intrastate shipments thereby enjoy the benefit of lower rates than do interstate shipments from adjacent areas, particularly the Virginia cities, into North Carolina. A second disparity in the levels of the rates is thus created.

The scope of the study is designed to trace the position of North Carolina with reference to its interstate adjustment of rates, showing the causes for the adjustment and the disparities between the adjustment to North Carolina and adjacent areas. The North Carolina intrastate rate structure is then discussed and the regulatory policy of the North Carolina state authorities is developed. The relationship between the interstate and the intrastate rates is considered and the effects of any disparities between them is noted. The problem presented involves the relative adjustment of rates to North Carolina and adjacent areas, the adjustment of rates to North Carolina from adjacent areas, and the adjustment of rates within North Carolina.

Authority to control and adjust the relative interstate adjustment of rates to North Carolina and to adjacent areas and the interstate adjustment of rates from adjacent areas to North Carolina is vested in the Interstate Commerce Commission. Congress is given control over interstate commerce and by legislation it has delegated the administration of this control to the Interstate Commerce Commission. The control of interstate commerce as granted by the Constitution to Congress has been interpreted by the courts to mean control over intrastate commerce whenever such commerce involves an unreasonable relationship to or exercises an undue effect upon interstate commerce. The North Carolina problem includes the adjustment of rates within the state. Accordingly, the scope of the study is extended to include a development of Federal authority over intrastate commerce in order that it may be understood to what extent the North Carolina intrastate rate structure may be controlled by the Interstate Commerce Commission in effecting a harmonious relationship between the several interstate adjustments of rates and the intrastate adjustment of rates involved in the problem.

After the causes underlying the several adjustments are traced and the causes for the discrepancies between them are noted, the study is concluded with suggestions of possible means of bringing about a harmonious relationship by eliminating the existing discrepancies and disparities.

CONTENTS

PAGE

Introduction v

CHAPTER I

A Summary of the Interstate Rate Structure and Rate Adjustment to North Carolina 1

CHAPTER II

Commission Regulation and Rate Making in North Carolina 17

CHAPTER III

North Carolina Intrastate and Interstate Rates..... 32

CHAPTER IV

The Power to Regulate Intrastate Freight Rates.... 44

CHAPTER V

Summary and Conclusions 56

Bibliography 63

CHAPTER I

A Summary of the Interstate Rate Structure and Rate Adjustment to North Carolina.

A summary of the development of the transportation facilities in the South is essential to an understanding of the rate structure in Southern Classification Territory and to an understanding of the position of North Carolina in that adjustment of rates. The growth of transportation facilities and systems and the growth of the rate structure in the South was influenced by the dominant factors of topography and resources. The trend of the economic development of the region and the natural channels through which its commerce flows were largely determined by these factors.[1]

The inland agricultural regions in the South demanded transportation facilities not only connecting with its seaports and navigable waters but also joining the whole with the manufacturing regions in the North and the food producing regions in the Middle West. Considered in its broader aspects, the early history of transportation in the United States is composed of efforts to break through the mountain barriers of the Appalachians and thereby to establish routes of travel connecting the Ohio and Mississippi valleys with the seaboard. The efforts in the North were more successful than in the South though the builders of southern railways maintained the idea of crossing the mountains as one of their foremost objects and entertained magnificent schemes to achieve this goal.[2] But the physiographic features of the Southeast determined that its main avenues of

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1. The best general sources for a discussion of the historical and geographical development of transportation systems in the South are: Meyer, B. H., and Collaborators, A HISTORY OF TRANSPORTATION IN THE UNITED STATES BEFORE 1860; Phillips, U. B., A HISTORY OF TRANSPORTATION IN THE EASTERN COTTON BELT; Ringwalt, L. J., DEVELOPMENT OF TRANSPORTATION SYSTEMS IN THE UNITED STATES; Smith, J. E., GEOGRAPHIC CONTROL OF TRANSPORTATION IN THE SOUTHEAST, Journal of Geography, May, 1914.

2. Meyer, B. H., A HISTORY OF TRANSPORTATION IN THE UNITED STATES BEFORE 1860, pages 3; 169-175.

transportation should be north and south, resulting in the movement of its many agricultural products and raw materials to the harbors and distributing and manufacturing centers on the Chesapeake waters and northward.[3]

The Southeast, extending from the Appalachian Mountains to the Atlantic Ocean, from the Potomac River to Florida and swinging around the base of the mountains to the Gulf of Mexico, is divided into two distinct physiographic provinces. Each of these provinces is long and narrow and in general lies parallel to the mountains and to the coast. The Piedmont Plateau has an elevation of 1200 feet where it joins the mountains on the west and slopes somewhat uniformly to its eastern margin. The width of the Piedmont Plateau varies from 150 miles in the south to a narrow strip at tidewater in the Potomac section. The Atlantic Coastal Plain stretches eastward from the eastern limits of the Piedmont Plateau. The western portion of the Coastal Plain, varying from thirty to forty miles in width, is known as the Pine Barrens. The eastern portion of the Coastal Plain, divided into an upper and lower pine belt, is low and level. The effect of the mountain ranges was to deflect transportation routes in a north-south direction in the Piedmont Plateau and the Coastal Plain regions.[4] Each of these regions is practically dominated by a single railway system. The Southern Railway operates almost exclusively in the Piedmont Plateau; the Seaboard system is confined to the Pine Barrens; and the Atlantic Coast Line is strongest in the lower Coastal Plain. All of these systems provide predominantly north-south routes of travel.

There was some connection between the seaports and navigable waterways and the Piedmont Plateau which ante-dated the extensive development of the north-south routes. These lines were short and attained scarcely more success than a temporary outlet for inland agricultural areas. Their absorption as integral parts of the north-south systems has occurred.[5] In the northern

3. Smith, J. E., GEOGRAPHIC CONTROL OF TRANSPORTATION IN THE SOUTHEAST, Journal of Geography, May, 1914.

4. *Ibid.*

5. Meyer, B. H., A HISTORY OF TRANSPORTATION IN THE UNITED STATES BEFORE 1860, pages 260 ff.

portion of the Southeast, the lines from the Virginia ports westward to the Pocahontas coal fields were successful in penetrating the mountain barriers and establishing communication with the Ohio valley. In the southern portion, Atlanta developed as the chief gateway to the Middle West with lines of railway extending in a general north-west and south-east direction through the Mississippi valley.

Several indicative and important facts are noticeable in the major transportation routes and junction points as the transportation network in the South has developed. These are:

1. Atlanta is the strategic transportation center of southern territory. Railway lines radiate from this point in all directions.

2. The ranges of the Appalachian Mountains divide the South into two sections. The predominant routes of travel run north and south on either side of the mountains.

3. The important gateways to the Middle West from the Southeast are Atlanta, Asheville, and the Virginia cities.

4. The Ohio River, bordering Southern Territory on the northwest, has several important crossings. These points, from Cairo to Kenova, serve as gateways between Southern territory and the Middle West.

5. The rail gateway to the North is at Potomac Yards, just outside of Washington, D. C. All three of the large southeastern railway systems converge at this point.

6. The South-Atlantic coast is drained by several large rivers and has several important ports. Of these ports, Norfolk, Va., is the farthest North and is the port where the lines of the Southern, Seaboard, and Atlantic Coast Line converge. When traffic moving by water-rail routes between the South and the North is routed through Norfolk, these carriers are given the longest possible rail haul. The importance of Norfolk is enhanced by its being the ocean outlet of the railway lines from the Virginia cities westward to the Pocahontas coal fields.

Wilmington, the largest of the North Carolina ports, is poorly located insofar as rail facilities are concerned since it has neither

direct communications into the Middle West nor is it a strategic point for the transfer of traffic between rail and water lines.

Charleston, S. C., and Savannah and Brunswick, Ga., are all favorably located for traffic originating in the lower portion of the Southeast or coming into the Southeast from the western side of the mountains, rounding them at their base by way of Atlanta and going thence to an ocean port.

The Gulf ports, Mobile, Ala., and New Orleans, La., have rail lines extending through the Mississippi valley to the Middle West.

7. North Carolina has only one rail line direct to the Middle West, that being the circuitous route of the Southern Railway by way of Asheville. Traffic between North Carolina and the Middle West, then, moves over this route or over a north-south route to the Virginia cities and thence over an east-west line to the Ohio River gateways.

The rate structure applicable in Southern Territory developed concurrently with the growth of its transportation facilities. Three dominant forces affecting the rate structure are noticeable, namely: (1) water competition; (2) competition of manufacturing centers for the southern markets; and (3) competition and rivalry among southern ports and jobbing centers. Competition between carriers is reflected in each of these forms of competition.[6]

The earliest railroads in the Southeast usually followed the traffic routes already opened by water transportation with the

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6. Haney, L. H., THE BUSINESS OF RAILWAY TRANSPORTATION, page 370. Congress created the Interstate Commerce Commission and delegated administrative control over transportation to it by the Act to Regulate Commerce in 1887. The powers of the Commission have been increased since this time. A chronological description of the powers, duties, and functions of the Interstate Commerce Commission can be found in Johnson, E. R., Huebner, G. G., and Wilson, G. Lloyd, PRINCIPLES OF TRANSPORTATION, Chapter XXVII and in Johnson, E. R., and Van Metre, T. W., PRINCIPLES OF RAILROAD TRANSPORTATION, Chapters XXVI-XXIX. The extent, nature, purposes, and fundamental differences in the several classification and freight rate territories can be found in Johnson, E. R., Huebner, G. G., and Wilson, G. Lloyd, PRINCIPLES OF TRANSPORTATION, Chapter XVII and the appropriate chapters describing the freight rates in each of the several classification territories.

result that competition between waterways and railways became acute. As a consequence of this competition, cities located on navigable waters were given low rates while relatively higher rates were maintained to points not so located. Often the rates to non-competitive points were made by adding the full local rate to the rate to the nearest competitive point. The genesis of the "basing point" rate structure is found in this situation.[7]

The rates established to the local, non-competitive points increased rapidly with distance so that rates to intermediate points between basing points would be higher than to the basing point beyond. The practice developed of giving to such intermediate points the benefit of their nearness to a basing point; the rates being made on the lowest combination through a basing point. This explains the policy of grading back; that is, the rate to an intermediate point would be a combination of the rate to the basing point plus the local back to an adjacent intermediate point.[8]

The Interstate Commerce Commission early described this situation and some of its results. It said:

"In this competition of boat and railroad, the rates of transportation which were directly controlled by it soon reached a point to which the railroads could not possibly reduce all their tariffs and still maintain a profitable existence. They did not attempt such a reduction but, on the contrary, while reducing their rates to the points of water competition to any figure that should be necessary to enable them to obtain the freights, they kept them up at all other points to such figures as they deemed the service to be worth or as they could obtain. It often happened, therefore, that the rates for transporting property over the whole length of a road to a terminus on a water highway would not exceed those for transportation of half the distance only to a way station not similarly favored with competition." [9]

The trade of the Middle West with the Southeast, passing

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7. Southern Class Rate Investigation, 100 I. C. C., 520; Jones, Eliot, PRINCIPLES OF RAILWAY TRANSPORTATION, pages 159 ff.

8. *Ibid.*

9. First Annual Report of the Interstate Commerce Commission, 1887, page 16.

through the Ohio River Gateways, was in competition with traffic from the Northeast, especially in regard to manufactured products. Carriers competed for the traffic from these two sections and the products of the Middle West were often carried to the North-Atlantic ports and thence by water to the South. Competitive rail rates likewise drew traffic from the Northeast by way of the Ohio River crossings to the South. The market and carrier competition between these sections resulted in a rate relationship wherein the same rate was made applicable from each of the Ohio River crossings and the rates from an Ohio River crossing to Atlanta were the same as the rates from Baltimore to Atlanta.[10] The Southern Railway and Steamship Association, a strong traffic pool which existed in Southern Territory for a time, was influential in bringing about the competitive adjustment described above since it had as one of its main objects the division of traffic from the Northeast and the Middle West to the South.[11]

As a result of these competitive influences, the following rate relationships and adjustments were worked out: (1) rates from all the Ohio River crossings to Atlanta were the same; (2) rates from points in the Middle West to the South were a combination of the rate to the Ohio River, usually a proportional rate, plus the full local rate beyond; (3) St. Louis had a fixed differential above and Memphis a fixed differential below the Ohio River crossings on inter-territorial traffic; (4) rates to interior points in the South were made with reference to the Atlanta rates and subsequently with reference to rates to minor basing points; and (5) rates to the South-Atlantic ports from the Ohio River crossings were usually lower than the rates to intermediate points.[12]

The factor of market competition between ports and trade centers in the South caused adjustments and compromises whereby a system of differentials in origin and destination points

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10. Johnson, E. R., and Huebner, G. G., RAILWAY TRAFFIC AND RATES, Volume I, page 422.
11. Freight Bureau v. New Orleans and Texas Pacific Railway Company, 6 I. C. C. 241.
12. Johnson, E. R., and Huebner, G. G., RAILWAY TRAFFIC AND RATES, Volume I, page 422.

has given to certain points relative advantages in rates.[13] The water-rail rates through the South-Atlantic ports are a good illustration. The rail rates to the states in the Southeast from the seaboard states in the Northeast are controlled by the charges over the water routes and the water-rail routes. Due to strategic location, Atlanta became the chief inland traffic center in the Southeast and the low rates over the water routes were reflected in the rates to Atlanta. Competition between other inland trade centers and between carriers caused the extension of the relatively lower rates to minor basing points such as Athens, Chattanooga, Birmingham, and other important traffic centers.[14]

The rates from the Middle West to parts of the Southeast, particularly to North Carolina, are based on a combination of rates through the Virginia cities' gateway. The adjustment of rates to the Virginia cities has been a disturbing and complicating factor in the southern rate structure. The first railway line from a Hampton Roads port to the Ohio River crossings was the Chesapeake and Ohio. In order that the ports which it served might attract some of the traffic moving between the Middle West and the Atlantic Seaboard, the Chesapeake and Ohio instituted rates to Norfolk, Newport News, and Richmond which were the same as the Baltimore rates. The Baltimore rates were the lowest in the group of North Atlantic port differentials.[15]

The Act to Regulate Commerce, enacted in 1887, contained a provision that no higher rate should be charged for a shorter than for a longer haul over the same line under substantially similar circumstances. In order to comply with this provision it was necessary for the Chesapeake and Ohio to lower its rates to the intermediate points along its line or to raise the rates to the ports. The former expedient was followed since higher rates at the ports would have resulted in the loss of most of its highly competitive traffic from the Middle West. Accordingly, the rates

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13. Haney, L. H., THE BUSINESS OF RAILWAY TRANSPORTATION, page 373.
14. Johnson, E. R., and Huebner, G. G., RAILWAY TRAFFIC AND RATES, Volume I, page 418.
15. *Ibid.*, pages 425 ff.

on the Chesapeake and Ohio were blanketed as far inland as Lynchburg.[16]

The Norfolk and Western, completed at a later date and operating in competition with the Chesapeake and Ohio, found it necessary to institute these low rates already in existence at the Virginia ports if it were to attract a share of the traffic. In addition, it extended the blanketing of the rates as far back as Roanoke. The Southern Railway, formed in 1894, became a competitor for a share of the traffic from the Ohio River crossings to the seaboard by virtue of its route through Asheville. It likewise instituted the low rates to the Virginia points which it served in competition with the Chesapeake and Ohio and the Norfolk and Western. But the non-competitive points in southern Virginia and in North Carolina were not given the benefit of the low rates in force at the Virginia cities.[17]

The Virginia cities lines are also interested in traffic to and from the South. Joint rates which reflected the level of low rates over competitive water routes were made with carriers operating in the Mississippi valley and connecting with the Virginia cities lines at the Ohio River and other points. Here, too, non-competitive points adjacent to the Virginia cities are charged higher rates.[18]

The rates between the Virginia cities and the Northeast are also upon a low level as influenced by the presence of coast-wise water competition. On a comparative basis, though based on the Virginia cities gateway for traffic from the Northeast, the rates to North Carolina have been on a relatively higher level. This same situation holds true with reference to rates to points in the other southeastern states.[19]

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16. *Op. Cit.*, pages 425 ff.
17. *Ibid.*; this situation is also described in the following cases: Danville v. Southern Railway, 8 I. C. C. 413; Interstate Commerce Commission v. Southern Railway, 122 Fed. 800; Wilmington Tariff Association v. Cincinnati, Portsmouth, and Virginia Railroad Co., et al, 9 I. C. C. 119; Interstate Commerce Commission v. Cincinnati, Portsmouth, and Virginia Railroad Co., et al, 124 Fed. 624; Rates to North Carolina Points, 29 I. C. C. 550; Southern Class Rate Investigation, 100 I. C. C. 513.
18. Johnson, E. R., and Huebner, G. G., RAILWAY TRAFFIC AND RATES, Volume I, pages 425 ff.
19. North Carolina Corporation Commission v. Director General, et al, 57 I. C. C. 523; 62 I. C. C. 64; 64 I. C. C. 264.

The above analysis indicates the presence of three distinct factors in the determination of North Carolina's position in the southern rate structure: (1) its location just south of the Virginia cities which were given the benefit of an unusually low level of rates; (2) the absence of rail facilities extending westward from a North Carolina port to the Ohio River valley; and (3) the absence of water competition in determining the rates to North Carolina points. The North Carolina adjustment is thus largely explained in terms of its geographic relationship to the Virginia cities. Competitive influences caused an unusually low level of rates to the Virginia cities. In practically all cases the rates to and from North Carolina were based upon the Virginia cities' gateway. To this extent, therefore, the North Carolina rates reflect the low level of rates in effect at the Virginia cities. On a comparative basis, however, the North Carolina adjustment has been on a much higher level than the Virginia cities' adjustment. Competitive conditions existing in North Carolina did not dictate the extension thereto of the same low level of rates which competitive conditions caused to become effective at the Virginia cities.

Transportation interests in North Carolina have considered the adjustment of rates to and from the state to be very unfavorable. A close geographic relationship has thrown North Carolina into keen competition with the Virginia cities. The freight rates to North Carolina have been much higher than those to Virginia cities. It is only natural, therefore, that there should have been many efforts to obtain a more satisfactory adjustment. Numerous complaints were filed by North Carolina interests before the Interstate Commerce Commission and some relief was obtained.[20] It is also natural that the regulatory and legislative

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20. The major cases involving the North Carolina adjustment are: Danville v. Southern Railway, 8 I. C. C. 413; Wilmington Tariff Association v. Cincinnati, Portsmouth, and Virginia Railroad Co., et al, 9 I. C. C. 119; Charlotte Shippers Association v. Southern Railway, et al, 11 I. C. C. 108; The Winston-Salem Coal Cases, 16 I. C. C. 12; North Carolina Corporation Commission v. Norfolk and Western Railway, et al, 19 I. C. C. 303; Rates to North Carolina Points, 29 I. C. C. 550; North Carolina Corporation Commission v. Director General, et al, 57 I. C. C. 523; 62 I. C. C. 64; 64 I. C. C. 264. The North Carolina situation is also discussed in the Southern Class Rate Investigation, 100 I. C. C. 513.

policy in the state should be designed to obtain relief from or to offset what was considered an adverse and unfavorable interstate adjustment. The consequence has been to bring into prominence the disparities and differences in the rate adjustments applicable within North Carolina and applicable to and from North Carolina.

The occurrence of changes in the adjustment of rates in Southern Territory has brought these differences into sharp contrast and has tended to magnify them. The basing point rate structure seems to have served its usefulness in the South and is now undergoing complete revision. Originally the rate structure developed to serve the particular transportation needs of the South. The railroads faced a difficult problem in this region of sparse population with no large trade centers. The basing point rate structure made it possible for the railroads to concentrate upon the development of trade centers and subsequently to increase the traffic over their lines. Continuation and further development of the structure was made necessary by the economic conditions in the South. Discriminations, favorable to some localities and unfavorable to others, have been the order of the day but it was by discrimination that the growth of southern towns was facilitated and promoted. The basing point rate structure was evolved as a compromise between competing interests and, on the whole, presented a finely and intricately adjusted rate structure.

Prior to 1910, the Interstate Commerce Commission was powerless to prohibit departures from the long and short haul principle if there was any dissimilarity in conditions. In that year the Mann-Elkins Act eliminated the phrase "under substantially similar circumstances and conditions" from the Fourth Section of the Act to Regulate Commerce and stipulated that the approval of the Commission would be a prerequisite to any departure from the long and short haul provision.[21] Immediately following the passage of the Mann-Elkins Act, the carriers operating in Southern Territory filed applications with the Inter-

21. Jones, Eliot, PRINCIPLES OF RAILWAY TRANSPORTATION, page 164.

state Commerce Commission requesting authority to continue granting low rates to many points throughout the South.

The Interstate Commerce Commission dealt with this subject in a comprehensive decision and the first fundamental change in the southern rate structure was ordered.[22] The principle followed by the Commission was to allow the railroads to charge lower rates to the more distant points than to the intermediate points when it was established: (1) that the lower rates to more distant points were necessitated by water competition; (2) that, although subnormal, these competitive rates yielded to the rail carriers some profit over and above the actual cost of handling; and (3) that the rates to the intermediate points were not unreasonable as measured by the usual standards by which the Commission tests rates. Using these three propositions as criteria, the Commission permitted the carriers to continue charging low rates to competitive points such as the South-Atlantic and Gulf ports, points on navigable rivers, and the Mississippi River crossings. The order of the Commission denied authority to continue lower rates to many interior points, such as Atlanta, Athens, Birmingham, Jackson, and Meridan, than to intermediate points.[23] A supplemental report and order was issued wherein the original order of the Commission was modified in certain particulars in such a manner as to permit the establishment of a harmonious and graded rate structure. The new tariffs, effective in 1916, thus eliminated many of the Fourth Section departures existing in the unmodified basing point structure.[24] There subsequently developed a tendency toward the elimination of rates that are a combination of charges from the points of origin to the basing points and the local rates therefrom to the final destination. In the place of such combinations of rates, there has been substituted a system of grouping local

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22. Fourth Section Violations in the Southeast, 30 I. C. C. 153.

23. Fourth Section Violations in the Southeast, 30 I. C. C. 153; Jones, Eliot, PRINCIPLES OF RAILWAY TRANSPORTATION, pages 164 ff; Vanderblue, H. B. and Burgess, K. F., RAILROAD—RATES—SERVICE—MANAGEMENT, pages 198 ff; Twenty-eighth Annual Report of the Interstate Commerce Commission, 1914, pages 20 ff.

24. Fourth Section Violations in the Southeast, 32 I. C. C. 61; Twenty-eighth Annual Report of the Interstate Commerce Commission, 1914, pages 20 ff.

points with the basing points, resulting in a blanketing of basing point rates to a number of surrounding towns and thereby giving rise to many "rate groups." [25]

The North Carolina interstate adjustment of rates was but slightly affected by the above changes, some slight changes being made in the North Carolina rates in order that they be somewhat in harmony with the new rates of the revised structure.[26] North Carolina points continued to be based upon the Virginia cities for rate-making purposes. No changes occurred in the North Carolina rates until direct complaints were filed. In 1914, the North Carolina Corporation Commission was successful in persuading the carriers to establish proportional rates to the North Carolina zones for that portion of the haul south of the Virginia cities on traffic from the Middle West. The Interstate Commerce Commission approved this adjustment and permitted the necessary departures from the Fourth Section.[27] Still later, rates between the North Carolina zones and the North and Southeast were revised by placing the North Carolina zones on a fixed differential above and below, respectively, the Virginia cities.[28] These changes definitely established a close relationship between the North Carolina zones and the Virginia cities and aligned the North Carolina zones with the Virginia cities rather than with the rest of the Southeast.

Trends in economic development caused the modified basing point rate structure to become obsolete and dictated further changes. The South is in a transitional stage from a predominantly agricultural section to an agricultural and industrial section. The railways are organized into large systems. Trade centers have developed. The old competitive conditions, the underlying causes of the basing point rate structure, no longer exert as powerful an influence upon transportation conditions. A

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25. Johnson, E. R., Huebner, G. G., and Wilson, G. Lloyd, PRINCIPLES OF TRANSPORTATION, page 244.

26. Huebner, G. G., TRAFFIC LESSONS, No. 20 and No. 21.

27. Rates to North Carolina Points, 29 I. C. C. 550; see *infra*, pages 27 ff, for a more detailed discussion of this case.

28. North Carolina Corporation Commission v. Director General, 57 I. C. C. 523; 62 I. C. C. 64; 64 I. C. C. 264; see *infra*, pages 32 ff, for a more detailed discussion of this case.

complicated interrelation of rates and numerous Fourth Section violations made the structure unwieldy and difficult to adjust to changing conditions. The increased power of the Interstate Commerce Commission over freight rates has been another cause looking toward revision.[29] The southern class rate structure, after a lengthy and careful investigation by the Interstate Commerce Commission, has been completely revised and rates throughout the South are being gradually placed upon a mileage basis. The scales adopted are based fundamentally upon distance. A single scale of distance rates to be used as maxima is prescribed for all standard carriers. This scale applies throughout southern territory except in a few specified areas or for certain short and weak lines. A uniform class rate relationship was ordered established for both interterritorial and intraterritorial hauls. The new structure definitely seeks to harmonize all class rates, intrastate, interstate, and interterritorial between the South and other rate territories.[30]

The North Carolina adjustment and the problem of its competitive relationship to the Virginia cities, border points in Official Classification Territory, was one of the most perplexing problems encountered in this investigation. The Commission stated that it could find no clearly recognizable commercial conditions dictating the boundaries of the Carolina zones and that no compelling reason, other than established custom, was offered to justify giving the Virginia cities' blanketed rates to the North Carolina zones.[31] Insofar as intraterritorial rates were concerned, the Commission was of the opinion that transportation conditions were sufficiently homogeneous in southern territory, with the exception of Florida, to require uniform application of the distance rate scales without granting North Carolina or other border states a concession of lower rates. But with

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29. Southern Class Rate Investigation, 100 I. C. C. 513; 109 I. C. C. 300; 113 I. C. C. 200.

30. *Ibid.* An excellent summary of the changes made in southern territory can be found in Johnson, E. R., Huebner, G. G., and Wilson, G. Lloyd, PRINCIPLES OF TRANSPORTATION, Chapter 21.

31. Southern Class Rate Investigation, 100 I. C. C. 613.

reference to the interterritorial problem of North Carolina, the Commission dealt more at length and stated:

". . . North Carolina communities have for many years insisted that the rates from central territory unduly prejudice them and unduly prefer the Virginia cities. This complaint has been accentuated by the blanketing of the rates from central territory over the entire lines of the Virginia cities, all the way from Roanoke to the coast. Thus, when a first-class shipment arrives at Roanoke it must now pay 70 cents additional to get to Winston-Salem, 122 miles to the South, while the same railroad, the Norfolk and Western, will carry the shipment the 250 miles and more from Roanoke to Norfolk without additional charge. This is an illustration, perhaps somewhat extreme, of one of the phases of the situation of which North Carolina complains. At present the rates from central territory to North Carolina points are made by adding proportional rates to the rates to the Virginia cities, except to the extent that lower rates are produced by combination on some Ohio River crossing. The rates to North Carolina points thus are, in general, definitely related to the Virginia cities' rates. This relationship would cease if the rates from central territory to North Carolina were based upon the southern territory scale without modification, and the spread over the Virginia cities would be greater in eastern than in western North Carolina. In the case of the lower classes the competitive situation at the North Carolina points would in many cases become worse than better, and in some instances this would even be true of the first-class rates." [32]

Thus, after consideration of the problem of the border states, the Commission believed that a modification of the distance scale was warranted, stating:

". . . We are of the opinion that a uniform and unmodified application between official and southern territories on all rail traffic of the southern territory class-rate scale herein approved would in many instances result in rates which would neither be reasonable nor free from undue preference and prejudice, particularly to and from the border districts of southern territory. To correct the situation in those districts, a scale of differential rates should be prescribed applicable within southern territory to and from all gateway points." [33]

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32. *Op. Cit.*, page 673.
33. *Ibid.*, page 675.

The Commission sanctioned the continuation of the North Carolina zone adjustment in relationship to the Virginia cities group in applying the scale of differentials to North Carolina. It was stated:

"In our judgment individual points or relatively small groups in the Carolinas will produce more satisfactory results than the present zones in the application of the differential rates. If, however, the carriers prefer the present zones and the shippers and communities are of like mind, the carriers may use the following first-class differentials, which we believe to be a fair adjustment of the differential scale . . . to average zone conditions:

To zone 1	45 cents
To zone 2	62 cents
To zone 3	78 cents
To zone 4	96 cents
To zone 5	112 cents." [34]

The final outcome of the changes ordered in the southern rate structure has been to harmonize more closely the rates between North Carolina points and Virginia cities with various destination and origin points and to strengthen the definite relationship between the blanketed Virginia cities and the zones in North Carolina.[35] But in so doing, the disparity between the Virginia cities and the North Carolina adjustment and the adjustment within North Carolina has been magnified. The changes in the southern class rate structure have, therefore, exercised but little influence upon the North Carolina interterritorial adjustment of rates. North Carolina has been partially differentiated from the South as a whole. Southern territory rates have shifted from the so-called basing point basis to a mileage basis but the North Carolina rates, for traffic with other freight territories, have been definitely related to the Virginia cities adjustment and continue to be based upon the blanketed grouping at the Virginia cities.

The situation now existing is intensified by the keen commercial rivalry and competition between Virginia and North Carolina which results from the geographical nearness of these

34. *Op. Cit.*, page 705.
35. *Ibid.*, page 513 ff.

two states. The relative level of freight rates is therefore an important consideration and any differences therein will give rise to complaints of discrimination and prejudice. North Carolina interests have long considered the relative adjustment as unfavorable and many complaints against it were made. Virginia interests consider that the adjustment within North Carolina discriminates against them and a complaint is now (1929) before the Interstate Commerce Commission. The cause of these conflicting opinions is to be found in the two-fold adjustment of rates to and from, and rates within, the State of North Carolina.

The following chapter is devoted to a study and analysis of the North Carolina intrastate rate structure and the regulatory and legislative policy of state authority. Particular attention is given to the relationship between the interstate adjustment and the North Carolina intrastate adjustment showing the effects which changes in them have produced.

CHAPTER II

Commission Regulation and Rate Making in North Carolina

The regulation of railways by state authority was initiated by the inclusion of provisions in the charters granted to the railway companies. The early charters were loosely drawn and embodied no clear conception of regulatory policy. The ends sought in charter provisions may be summarized as: (1) the rendering of safe and prompt service to the public; (2) the regulation of tariffs and rates of the railway companies; and (3) co-operation in the transportation of freight and passengers by intersecting or connecting carriers.[1]

Charter provisions were generally unsatisfactory as an effective means of control. There was but little uniformity in the restrictions imposed and in most instances the restrictions were not in accord with the conditions of transportation and either imposed undue burdens upon the carriers or were ineffective in their control. The inclusion of provisions in special charters was soon superseded by the practice of requiring the railways to incorporate under general railway incorporation laws. Compliance with the provisions of a general law was conducive to uniformity in the conditions imposed upon each carrier.[2]

The general railway incorporation law of North Carolina, enacted in 1872,[3] was comprehensive in scope. It contained most of the principles and practices embraced in the special charters previously granted and marks the point of departure for subsequent legislation on the subject of transportation. The provisions of the North Carolina statute may be grouped under four headings:

(1) The rules for the formation of railroad companies:

Articles of Association could be drawn by not less than

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1. Ferguson, Maxwell, STATE REGULATION OF RAILROADS IN THE SOUTH, Chapter I.
2. Meyer, B. H., RAILWAY LEGISLATION IN THE UNITED STATES, page 77.
3. North Carolina Public Laws, 1871-1872, Chapter CXXXVIII.

twenty-five persons. The name of the company, the length of its corporate life, the routes of railway lines, the amount of capital, and the names and residences of the directors were required to be stated in the application for a charter.

(2) Chief powers of railroad companies:

The chief powers granted the railroad companies were to connect and intersect with other railroads, to determine the time and manner in which passengers and property should be transported, to borrow money for construction and operation, and to fix the charges for transportation, with the proviso that passenger fares could not exceed a maximum of five cents per mile.

(3) Reports to the Governor:

All corporations formed under the act had to submit annual reports to the Governor. The principal items to be included in the reports were the amount of capital and indebtedness, the cost of road and equipment, the transportation services rendered, the expenses of maintenance, and the gross and net earnings.

(4) Powers of the state legislature:

The General Assembly reserved the right to reduce freight rates and passenger fares unless the reduction would decrease the net profits to less than ten per cent of the capital actually invested by the company.[4]

Like the general law of other states, the North Carolina law barely touched upon the vital questions of extortionate charges and unjust discriminations. Problems of this nature soon awakened the people to a more profound conception of the relations of the railroads to the state. Thus the ineffectiveness of general incorporation laws, even when their administration was supplemented by supervision by boards of public works or internal improvements, led to more stringent regulation through commissions. The southern states followed the lead of the northwestern states by establishing commissions with mandatory powers.[5]

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4. *Op. Cit.*
5. Ferguson, Maxwell, STATE REGULATION OF RAILROADS IN THE SOUTH, page 44. The southern states established regu-

The establishment of a railroad commission in North Carolina took place only after a lengthy legislative fight. The first bill introduced in the General Assembly in 1879 was rejected by the Senate committee. A substitute bill which eliminated the mandatory provisions of the original was passed by the Senate but failed to receive consideration in the House.[6] A bill introduced during the next session of the General Assembly died in committee.[7] The struggle was renewed when, in 1883, it was recommended that an advisory commission be established.[8] Several bills were introduced in response to the recommendation but the two branches of the General Assembly could reach no agreement concerning their provisions.[9] A similar recommendation two years later received an unfavorable committee report and was dropped from consideration.[10] The recommendation referred to the consideration of the General Assembly in 1889 advocated a commission with regulatory power but it came to naught when the Senate and the House again failed to reach an agreement.[11] Public agitation was stronger by the time the General Assembly convened for its session in 1891 and favorable response was given the next recommendation.[12] Committee conferences resulted in a satisfactory bill and the statute creating the North Carolina Board of Railroad Commissioners became a law in 1891.[13]

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latory commissions in the following order: Georgia, 1879; South Carolina, 1882; Tennessee, 1883, abolished, 1885, and re-established, 1897; Alabama, 1883; Mississippi, 1884; Florida, 1887, abolished, 1891, and re-established, 1897; North Carolina, 1891; Louisiana, 1899; Kentucky, 1900; Virginia, 1902, changing from an advisory commission established, 1877; and West Virginia, 1913.

6. North Carolina Senate Journal, 1879, pages 491 and 605; House Journal, 1879, page 805.

7. North Carolina Senate Journal, 1881, page 520.

8. North Carolina Legislative Documents, 1883, page 10.

9. North Carolina Senate Journal, 1883, pages 92, 254, and 401; House Journal, 1883, page 483.

10. North Carolina Legislative Documents, 1885, page 18; North Carolina Senate Journal, 1885, pages 221 and 229.

11. North Carolina Public Documents, 1889, pages 19-20; North Carolina Senate Journal, 1889, page 452.

12. North Carolina Public Documents, 1891, pages 34-35.

13. North Carolina Public Laws, 1891, Chapter 320; North Carolina Senate Journal, 1891, pages 132, 270, and 317, House Journal, 1891, page 726.

The statute as passed followed in general outline the law earlier passed in Georgia and its provisions relative to discrimination in rates and practices were similar to those contained in the Interstate Commerce Act enacted by Congress in 1887. The law provided that the three North Carolina Commissioners were to be elected by the General Assembly. No one having financial interest or connections with a railroad was eligible for election. The Commission was empowered to fix just and reasonable rates and regulations for transportation and was given power to prescribe joint through rates. The schedules of rates and fares so fixed were to be considered as prima facie evidence of reasonableness but could be appealed to the state courts for review. Power was granted to permit special rates for the purpose of developing all manufacturing, mining, milling, and internal improvements in the state. Investigations of complaints against both intrastate and interstate rates were to be made and the latter brought to the attention of the Interstate Commerce Commission.[14]

One of the first acts of the newly established Commission was to institute an investigation of the rates and classifications effective in North Carolina. This investigation resulted in the promulgation of a standard freight classification, uniform rules governing the transportation of passengers and freight, and standard passenger and freight tariffs. Passenger fare was fixed at three and one quarter cents per mile, first class, and two and three quarter cents per mile, second class. The standard freight tariff was a mileage tariff applicable to six numbered and thirteen lettered classes. It was graduated in five mile blocks to one hundred miles and ten mile blocks to two hundred and seventy miles. The first class rate per 100 pounds increased from twelve cents for five miles to sixty-six cents for two hundred and seventy miles. Other classes were in accord therewith.[15]

It was not attempted to require a rigid adherence to the standard freight tariff since the conditions of transportation varied

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14. North Carolina Public Laws, 1891, Chapter 320.
15. Report of the North Carolina Board of Railroad Commissioners, 1891, pages 3, 33-78.

as between companies and in different parts of the state. When first promulgated, the standard freight tariff was applied to only nine companies or specified parts of a company's line. A special tariff was established for twenty roads or specified branch lines; twenty-four carriers or branch lines were allowed to add arbitraries from ten to thirty per cent to the standard tariff.[16]

The policy and attitude of the Commission toward its duties and the results immediately obtained were stated in its first report which declared:

"The enormous amount of capital invested in the leading trunk lines, and the powers thus granted without control, necessarily led to excesses and the want of proper regard to the rights of citizens. This led to mutual distrust and want of confidence, whereby the public interest as well as the success of the railroads suffered. The interest of each is promoted by good feeling and mutual prosperity. To deny corporations a reasonable and fair compensation on their investment, or burden them with unreasonable legislation, as well as taxation, is contrary to public policy, it being evident that the prosperity of railroads enables them to give better accommodations and to serve the public more satisfactorily. The Commission has in all matters endeavored to adopt a conservative course as a friendly umpire between the railroads and the public; and the universal courtesy shown by various officials, and their readiness to redress grievances, induces us to believe that our efforts in this regard have been of benefit.

". . . We can briefly state, however, that on all roads making actual expenses, the charges for fares and freights have been reduced; and all unjust discriminations, originating within the state and brought to our attention, have been corrected. The Commissioners' standard rates now in effect are lower than in any other southern state. Until our population becomes more dense and our manufactories more numerous, rates can not be established as now exist in the states north of us without bankrupting the corporations." [17]

Relationships between the Commission and the railroads in North Carolina were from the beginning harmonious. All com-

16. *Op. Cit.*, pages 78 ff.
17. *Ibid.*, page 4.

plaints were adjusted satisfactorily to the interested parties. The only major conflict with a carrier during the early life of the Commission arose when an order was given to reduce passenger fares on the Wilmington and Weldon Railroad. The Commission planned to reduce passenger fares throughout the state and decided to introduce the reduction on the above line as being the most able to stand it.[18] A protest against this arbitrary action was naturally made and the rates were restored to the standard passenger fares.[19]

There were no radical changes in the standard freight rates for a number of years. The exercise of control by the Commission over freight rates was limited to the adjustment of rates on particular commodities, classification of commodities, and the gradual extension of the standard tariff in lieu of the special tariffs or arbitraries. The changes made looked toward the lowering of rates. The adjustment of a controversy concerning the minimum car load weight for fertilizer is illustrative of the adjustments which were being made. The Commission granted a request of the carriers to raise the minimum car load weight on fertilizer from ten to fifteen tons. Shippers immediately complained on grounds that this requirement discriminated against them. It was pointed out that the new tariffs of the carriers specified a ten ton minimum car load weight to and from points in Virginia and South Carolina and a fifteen ton weight to and from North Carolina points. The difference, it was claimed, subjected the North Carolina shippers to an undue burden. The Commission re-ordered the ten ton minimum weight since it "could not understand why the same roads could not furnish the people of North Carolina, who appeared to be in similar conditions to people in Virginia and South Carolina, the same accommodations at the same rates." [20]

In 1899 a legislative enactment changed the Board of Railroad Commissioners into the Corporation Commission. The powers

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18. Report of the North Carolina Board of Railroad Commissioners, 1898, page 4.
19. *Ibid.*, 1899, page 4.
20. *Ibid.*, page 7.

and duties of the old commission were transferred virtually unchanged to the new commission. Its jurisdiction was extended to include not only transportation agencies but also other public utilities, public and private banks, loans and trust companies, and building and loan associations.[21]

One of the first important matters called to the attention of the new Commission was a petition to adopt classification No. 27, later No. 28, of the Southern Tariff Association for application in North Carolina. Southern classification No. 25 had been in force in North Carolina for several years. Upon investigation it was found that the effect of adopting the proposed classification would be to materially increase the freight rates in North Carolina and the request was denied.[22] A similar petition requesting that southern classification be permitted over the lines of the Southern Railway was denied for the same reason.[23]

Reduction in passenger fares became an important feature in the regulation of railways in North Carolina early in the life of the new Commission. It was announced in 1902 that substantial reductions in passenger fares had been obtained by requiring application of the standard passenger tariff over the entire lines of all the larger companies.[24] The Commission believed that better service at lower rates could be furnished if only one class of service were required and it repeatedly recommended changes in the North Carolina law requiring two classes of service.[25] The General Assembly at first took no action on this recommendation[26] but later linked it to a scheme to reduce the passenger fares to an amount even lower than contemplated by the Commission.[27] Accordingly, the requirement of two classes of service was abolished and the passenger fare fixed by law at two and one quarter cents per mile.[28]

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21. North Carolina Public Laws, 1899, Chapter CLXIV.
22. Report of the North Carolina Corporation Commission, 1900, page 5.
23. *Ibid.*, 1903, page 189.
24. *Ibid.*, 1902, page 3.
25. See, e. g., Report of the North Carolina Corporation Commission, 1904, page 8; 1906, page 11.
26. Report of the North Carolina Corporation Commission, 1906, page 11.
27. North Carolina Public Documents, 1907, pages 10-11.
28. North Carolina Public Laws, 1907, Chapter CCXXVI.

Some of the carriers refused to lower their rates. Indictments against officers of the offending carriers were requested but were not granted since injunctions had been secured to prevent the application of the penalties provided in the law. This phase of the controversy was settled by an agreement whereby the new rates were to be effective pending the determination of the validity of the law by the courts.[29] The occurrence of a financial crisis at this time made a speedy adjustment desirable. Accordingly, it was proposed that a rate of two and a half cents per mile be established intrastate and that the interstate rate applicable to and from North Carolina be lowered to the same amount. The compromise was accepted and ratified by the General Assembly in extra session.[30]

Transportation problems in the state were shaping themselves in such a fashion by this time that it had become both desirable and necessary that steps be taken to improve the adjustment of freight rates in force to and from North Carolina points on the one hand and Virginia points on the other. The attention of the Commission was first directed to this problem in 1899 when the Wilmington Tariff Association filed a complaint alleging that the rates from Wilmington to points in the western part of the state were much higher than the rates from the Virginia cities to such points. Distance comparisons favored Wilmington. There was thus presented a clear instance in which lower interstate rates discriminated against shippers using the intrastate rates in North Carolina. Moreover, it was declared in the complaint that Wilmington, under the existing adjustment of interstate rates, was compelled to pay a higher rate of freight to receive its supplies than was paid by the Virginia cities from common points of origin.[31]

No ruling was made by the Commission since the carriers voluntarily granted relief by reducing the intrastate rates from Wilmington to the western North Carolina points.[32] Such action,

29. North Carolina Public Documents, 1909, pages 4-7.
30. *Ibid.*
31. Wilmington Tariff Association v. Southern Railway and Atlantic Coast Line Railway, Report of the North Carolina Corporation Commission, 1899, pages 217-218.
32. *Ibid.*

however, only touched upon one phase of the situation and the North Carolina interests also demanded relief by a reduction in the rates applying to and from North Carolina. On a comparative basis such rates were materially higher than those existing to the Virginia cities with which North Carolina points were in keen competition. A major portion of the Commission's attention was soon to be devoted to efforts to obtain relief from this adjustment.[33] The intrastate rates in North Carolina were on a low level, in many instances lower than in any other southern state.[34] Further relief by reducing intrastate rates could hardly be expected. The only alternative was for improvement in the interstate adjustment. The situation demanding action on the part of the Commission and its policy in reference thereto is best stated in its own words:

"There has been for many years great dissatisfaction with the interstate rates into our State, and in some cases to rates on freight going out of the State. The disparity of such rates to Virginia cities just a short distance north of us is great, and the effect of such disparity is to build up commerce to Virginia cities at the expense of our own cities and towns. The Chamber of Commerce of Wilmington[35] brought a proceeding before the Interstate Commerce Commission in 1899 to correct this grievance and properly adjust interstate rates to Wilmington, N. C. An order was obtained which would have secured this object to some extent but the Federal court refused to enforce the order.

"A few years later the Board of Trade of the City of Charlotte[36] brought a proceeding before the Interstate Commerce Commission alleging discrimination in favor of Virginia cities against Charlotte and, while the discriminations were clearly established, the Interstate Commerce Commission felt powerless to afford relief because of dissimilarity of conditions existing at Charlotte and at Virginia

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33. See Chapter I for a statement of the interstate adjustment of rates to North Carolina. A list of the cases complaining against the adjustment of rates to North Carolina is cited *supra,* page 9, footnote 20.

34. Charlotte Shippers Association v. Seaboard Airline Ry., Report of the North Carolina Corporation Commission, 1904, page 43.

35. Wilmington Tariff Association v. Cincinnati, Portsmouth, and Virginia Railroad Co., et al, 9 I. C. C. 119.

36. Charlotte Shippers Association v. Southern Railway, et al, 11 I. C. C. 108.

cities. In both these proceedings our Commission rendered every aid in their power.

"From time to time complaints as to interstate rates were made to our Commission. The act establishing the Commission authorizes them to consider all complaints as to discrimination in interstate rates, and, if satisfied that the same are unlawful, to bring proceedings before the Interstate Commerce Commission to correct same. This act was amended to include complaints of unjust and unreasonable rates as well as discriminatory rates by the General Assembly of 1907 . . .

"Upon investigating complaints from shippers and consignees in cities and towns, the Corporation Commission found that such complaints were well founded, and that unjust and unreasonable and also discriminatory rates were charged into and out of Winston-Salem, . . . and accordingly brought a proceeding [37] before the Interstate Commerce Commission to correct the grievances." [38]

Only slight relief was obtained by the order of the Interstate Commerce Commission in this proceeding. The North Carolina Commission expressed disappointment that the relief sought was not granted in full.[39] It considered, nevertheless, that the favorable decision ordering some reduction was equivalent to demonstrating that all the rates to North Carolina were upon an unreasonably high level. As such, it was hoped that there had been established a precedent upon which more comprehensive reductions could be obtained.[40] A complaint attacking the North Carolina rate adjustment to the North and East and to the South was therefore filed.[41]

The situation in the interstate rate adjustment involved many controversial matters and gave rise to a bitter fight. The transportation conditions controlling the adjustment of freight rates to the state were considered to be inimical to commercial development. A trying situation was created by the fact that North

37. North Carolina Corporation Commission v. Norfolk and Western Railway, 19 I. C. C. 303.
38. Report of the North Carolina Corporation Commission, 1908, pages 5-6.
39. *Ibid.*, 1910, page 7.
40. *Ibid.*, 1912, pages 3-4.
41. North Carolina Corporation Commission v. Director General, et al, 57 I. C. C. 523; 62 I. C. C. 64; 64 I. C. C. 264.

Carolina was adjacent to the Virginia cities which had a low level of rates in marked contrast to the rates to North Carolina from the same points of origin. The commercial interests of North Carolina naturally felt that the situation resulted in giving an immense commercial advantage to the cities of Virginia, an advantage permitting enterprises located in Virginia to deal in North Carolina to the exclusion of, or upon better terms than those afforded to, enterprises located in North Carolina itself. Gradually there developed the feeling that something must be done to improve the situation. The argument was presented that an unjustifiable advantage with respect to commercial relations was possessed by Virginia cities in respect to North Carolina business and that, independently of any question of the reasonableness of rates, there should be such an adjustment as would enable North Carolina to do business in its own territory on conditions of equality with the Virginia cities or as close equality as commercial conditions warranted.[42]

On the other hand, the carriers operating in North Carolina did not consider themselves responsible for the situation in Virginia. It was created without their influence and continued independently of any action on their part. It was considered that all they could do was to establish rates to North Carolina that were reasonable in themselves and that there was no obligation upon them to reduce rates below a level of reasonableness because other carriers had created a situation at nearby points which acted unfavorably upon the commercial development of North Carolina.[43]

A controversy resulted from these diverse views: on the one hand, the people of North Carolina felt that they were subjected to a commercial disadvantage because of relatively high freight rates; on the other hand, the carriers felt that the commercial disadvantage was not one of their creation and was not within their control. Sentiment within North Carolina became aroused and manifested itself when in 1913 the General Assembly passed

42. See I. C. C. Fourth Section Application No. 8806-8807, testimony A. P. Thom, pages 20 ff., for a detailed description of this situation. Rates to North Carolina Points, 29 I. C. C. 550.

43. *Ibid.*

a resolution establishing a legislative committee to investigate the situation and bring it to the attention of the carriers.[44]

A meeting between the legislative committee, the Governor, and the Council of State of North Carolina and representatives of the railroad companies operating in the state was soon held. A proposition made by the carriers was refused by the legislative committee which insisted upon a rigid enforcement of the long and short haul clause of the Interstate Commerce Act. Negotiations were ended when no agreement could be reached.[45]

At this juncture the chairman of the North Carolina Corporation Commission approached the carriers with the suggestion that informal conferences be held looking toward agreeing upon a satisfactory solution of the controversy. The idea of securing an adjustment by conference rather than by litigation was endorsed by the carriers and an extended series of negotiations ensued. Progress was slow but in the end the carriers agreed to make most of the reductions which had been requested.[46]

The agreement reached as a result of these negotiations, with recommendations of acceptance both from the North Carolina Commission and the chairman of the Interstate Commerce Commission who had been consulted frequently during the negotiations was referred to the Governor of North Carolina.[47] The adjustment was submitted to a special session of the General Assembly and there approved.[48] It was then necessary for the Interstate Commerce Commission to sanction the Fourth Section violations contained in the proposed adjustment of proportional rates south of the Virginia cities to North Carolina before they could be put into effect. The North Carolina Corporation Commission joined with the carriers in making the request.[49] Ap-

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44. North Carolina Public Laws, 1913, Joint Resolution No. 48.

45. I. C. C. Fourth Section Applications No. 8806-8807, Testimony of A. P. Thom, pages 20 ff; Rates to North Carolina Points, 29 I. C. C. 550.

46. Report of the North Carolina Corporation Commission, 1912, page 4; 1913, pages 5-46.

47. *Ibid.*, 1913, page 39.

48. North Carolina Public Laws, Extra Session, 1913, Joint Resolution No. 5.

49. Rates to North Carolina Points, 29 I. C. C. 550.

proval of the proposed rates was granted and they went into effect on July 23, 1914.[50]

The accomplishment of the North Carolina Corporation Commission in the adjustment of this controversy was an important achievement. The whole matter was of great magnitude and it was settled quickly and inexpensively. It was estimated that the reduction in rates would save the shippers in North Carolina approximately $2,000,000 per year. This represents the largest and most comprehensive concession in freight rates which up until this time had been made by the railroads to any state.[51]

Intrastate rates in North Carolina were completely revised soon afterwards. The special session of the General Assembly which approved the interstate adjustment also provided for a legislative commission to investigate the reasonableness of freight rates in North Carolina and prescribe such changes as might be desirable.[52] After an investigation, the special rate commission prescribed a schedule of rates, slightly lower than the standard tariff then in effect, for application on railways of more than seventy-five miles in length. It also provided for adoption of Southern Classification except where lower ratings were shown by the North Carolina classification. The new schedule of intrastate rates, governed by southern classification and the North Carolina exception sheets, became effective in October, 1914.[53]

No attempt was made to revise the schedule of rates for railroads less than seventy-five miles in length. The Commission found it impossible to apply the new schedule of rates to them because, in conjunction with the strict long and short haul clause contained in the act creating the special rate commission, the lower level of rates would have deprived the short lines of much of their revenue.[54]

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50. Report of the North Carolina Corporation Commission, 1914, page 4.
51. Report of the North Carolina Corporation Commission, 1913, page 39.
52. North Carolina Public Laws, Extra Session, 1913, Chapter XX.
53. Report of the North Carolina Corporation Commission, 1914, page 4.
54. *Ibid.*

A revision in express rates was made during this same year. In February, 1914, the Interstate Commerce Commission prescribed a schedule of express rates for interstate application. It was hoped that the schedules thus prescribed would be adopted for intrastate application thereby bringing about uniformity in the express rates throughout the United States. The carriers made requests to the state authorities for the necessary permission to revise the intrastate rates. The North Carolina Commission, after careful consideration, adopted the general basis provided in the interstate revision. It was modified to the extent of requiring lower rates for short distances and continuing in effect certain special commodity rates.[55]

No other comprehensive adjustments have occurred in the North Carolina intrastate freight rates. The Commission approved a request for an increase in freight rates following the percentage increases ordered in interstate rates by the Interstate Commerce Commission in 1920.[56] At the same time a request for an increase in passenger fares was denied. Carriers in the state brought the request before the Interstate Commerce Commission and the passenger fares in North Carolina were increased by its order in the proceeding.[57]

The North Carolina Commission has continued its activities looking toward the adjustment of interstate rates to and from North Carolina. Reductions in the class rates to and from Trunk Line Territory and the Southeast were secured.[58] The adjustment prescribed for application between Virginia cities and North Carolina in this case has brought out the effects of differences in the levels of the intrastate rates in North Carolina and the interstate rates applying to and from the state. This problem is now (1929) in issue before the Interstate Commerce Commission and is discussed more fully below.[59] A complaint of unreasonableness against the coal rates to the state resulted

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55. *Op. Cit.*, page 5.

56. Increased Rates, 1920, Ex Parte, No. 74, 58 I. C. C. 220.

57. North Carolina Fares and Charges, 60 I. C. C. 362; see *infra*, page 53 for a more detailed analysis of this case.

58. North Carolina Corporation Commission v. Director General, et al, 57 I. C. C. 523, 62 I. C. C. 64; 64 I. C. C. 264.

59. *Infra*, Chapter III.

in voluntary reductions by the carriers.[60] The North Carolina Commission prepared elaborate statements of the North Carolina rate situation and made every reasonable effort to protect the interests of the North Carolina shippers in the general investigation of southern class rates.[61]

The North Carolina rate structure has been upon a mileage basis since the first standard tariffs were promulgated by the Commission. As soon as it was believed that conditions warranted, the schedule of rates was made uniformily applicable throughout the state. Special consideration has been given short and weak lines. The intrastate structure is, in general, simple. The level of rates prescribed by the Commission has been considered by the carriers as unduly low. Comparisons indicate that they are lower than those of any other southern state.[62]

A relatively high level of rates to and from the state has coexisted with this low level of intrastate rates. While many revisions have been made in the interstate adjustment, there still remains a wide discrepancy between the levels of the intrastate rates and the interstate rates. The relationship between the intrastate and the interstate structures and the effects of any disparities between them constitutes the subject matter of the following chapter.

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60. Report of the North Carolina Corporation Commission, 1923-24, pages 12-13; 1925-26, pages 6-7.

61. Southern Class Rate Investigation, 100 I. C. C. 513; Report of the North Carolina Corporation Commission, 1923-24, page 13; 1925-26, page 7.

62. *Infra,* pages 36 ff.

CHAPTER III

North Carolina Intrastate and Interstate Rates

The Virginia cities for many years have been grouped as a single rate unit on class traffic to the Carolinas and other southeastern states. Generally speaking, points in central and eastern North Carolina were grouped with the Virginia cities for this traffic and rates from the North Carolina points were the same as those from the Virginia cities. The North Carolina Corporation Commission filed a complaint against the unreasonableness of this grouping and was successful in having the Interstate Commerce Commission order a revision.[1]

Following the revision, destination and origin points in North Carolina were divided into groups and minimum differentials under the Virginia cities' rates were prescribed for application between the North Carolina groups and the Southeast. A similar adjustment was prescribed for the rates between North Carolina and Trunk Line territory though in this case the North Carolina groups took a differential above the Virginia cities.[2]

Rates between the North Carolina groups and the Virginia cities group were also revised. It was recognized that the existence of group rates between North Carolina and Virginia would cause disparities and create undue prejudice at border points. Accordingly there was prescribed a mileage scale for alternative application for the shorter distances. In discussing the purposes and use of the mileage scale, the Interstate Commerce Commission stated: "Manifestly, it will be used only in connection with comparatively short hauls, for the group rates will be less for the longer hauls, in many cases materially less. Were the group rates to be abolished and a distance scale substituted for general application, undoubtedly a lower scale than the one suggested would be appropriate." [3]

Two sets of rates for application between Virginia and North

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1. North Carolina Corporation Commission v. Director General, et al, 57 I. C. C. 523; 62 I. C. C. 64; 64 I. C. C. 264.
2. *Ibid.*
3. North Carolina Corporation Commission v. Director General, et al, 64 I. C. C. 270.

Carolina were thus published: distance scales to be applied from each of the Virginia cities over single line hauls for distances not greater than two hundred miles and group rates to be applied from Virginia cities as a group to grouped destinations in North Carolina. The two sets of rates were for alternative application, whichever was lowest to be used.[4]

These rates were but recently put on the above basis and were therefore excluded from the scope of the general southern class rate investigation undertaken by the Interstate Commerce Commission.[5] Traffic interests located in the Virginia cities, however, considered that the adjustment was prejudicial and brought it into issue before the Interstate Commerce Commission in a separate proceeding.[6]

The complaint filed by the State Corporation Commission of Virginia attacked the distance rates applicable between Virginia and North Carolina and the classification ratings applicable thereto. It was alleged that because of lower rates within North Carolina the distance rates between Virginia and North Carolina were unreasonable, unjustly discriminatory, and unduly prejudicial to Virginia shippers and localities in violation of the first, third, and thirteenth sections of the Interstate Commerce Act. The Interstate Commerce Commission was asked to prescribe reasonable and non-discriminatory rates for the future. Specifically, relief was requested by raising the intrastate rates within North Carolina. The allegation of unreasonableness in violation of section one of the Interstate Commerce Act was withdrawn at the close of the hearing.[7]

The complaint was directed solely at the distance rates between Virginia cities and North Carolina and did not assail the group rates.[8] The distance scales are limited to single line hauls and to distances of less than two hundred miles. They have, therefore, but limited application, as:

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4. North Carolina Corporation Commission v. Director General, et al, 57 I. C. C. 523; 62 I. C. C. 64; 64 I. C. C. 264.
5. Southern Class Rates Investigation, 100 I. C. C. 513.
6. Virginia Corporation Commission v. Aberdeen and Rockfish Railroad Company, et al, Docket No. 16, 321, 136 I. C. C. 173.
7. *Ibid.*
8. *Ibid.*, page 175.

1. From Roanoke the distance scale applies to the Winston-Salem branch of the Norfolk and Western but does not include Winston-Salem.

2. From Lynchburg it applies to the Durham branch of the Norfolk and Western, including Durham; to the main line of the Southern Railway to and including Lexington; to the Atlantic and Yadkin for a short distance south of Greensboro; and to the High Point, Randleman, and Ashboro for a short distance south of High Point.

3. From Richmond it applies over the Atlantic Coast Line to Rocky Mount and Halifax; over the Seaboard to Henderson and east of Norlina to Littleton; and to only three small stations on the Southern between Clarksville, Va., and Oxford, N. C.

4. From Suffolk it applies over the Atlantic Coast Line to Wilson, Greenville, and Washington; over the Norfolk Southern to Greenville, and over the Seaboard to Henderson.

5. From Norfolk it applies over the Atlantic Coast Line to Rocky Mount, Parmalee, and Halifax; over the Norfolk Southern to points north of Belhaven and Pine Town; and over the Seaboard to Norlina.[9]

The distance scales have a more extended application from the smaller towns in Southern Virginia. This is relatively unimportant, however, since but little class traffic for North Carolina originates at these points.[10]

The relationship between the distance and the group rates and the competitive relationships involved are important. Disregarding the alternative mileage scale, equal rates apply from the entire Virginia cities group to all points of destination in each of the respective North Carolina zones.[11] From a commercial standpoint, the zone adjustment benefits both shipper in Virginia

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9. Virginia Corporation Commission v. Aberdeen and Rockfish Railroad Co., et al, I. C. C. Docket No. 16, 321. Testimony of L. V. Crane, pages 560 ff.

10. *Ibid.*

11. Roanoke and Lynchburg take zone 2 rates to the extreme eastern portion of zone 1.

and receiver in North Carolina. It places all the Virginia cities on a parity and enables receivers located in each of the North Carolina zones to purchase goods from any of the Virginia cities at the same transportation charge. From the standpoint of carrier competition, the zone adjustment enables all the carriers, whether serving one or all the Virginia cities, to enter in the traffic. An illustration will serve to make this point clear: Charlotte, North Carolina, is 384 and 398 miles respectively via the Seaboard and the Norfolk Southern from Norfolk, Virginia. From Lynchburg, Virginia, it is a distance of 205 miles over the Southern. The rate to Charlotte is the same from both origin points.[12]

As a result of the revision of the rates between Virginia and North Carolina, there is an alternative mileage scale applicable in connection with this group adjustment. But the alternative mileage scale is only an incidental or secondary part of the adjustment between Virginia and North Carolina. The primary basis is the group adjustment. The alternative distance scale is designed to cover the movements for comparatively short hauls only and it was never expected that it would displace the group adjustment to any appreciable extent. The two must be considered together as parts of the whole for any intelligent consideration of the reasonableness of the rates.[13]

Voluminous testimony was presented to show that the intrastate rates in North Carolina were unreasonably low. It was contended that because of the low level of rates applicable intrastate in North Carolina, merchants located in Virginia were subjected to undue discrimination when they shipped goods into North Carolina in competition with merchants located in North Carolina. It was not disputed that there was keen competition between the merchants in the respective states for the business in North Carolina. Nor was any great dissimilarity between

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12. Virginia Corporation Commission v. Aberdeen and Rockfish Railroad Company et al, I. C. C. Docket No. 16,321; testimony of L. V. Crane, pages 557 ff.

13. *Ibid.*

the transportation conditions shown as a justification for differences in the rates.[14]

The comparative level of the North Carolina intrastate rates and the differences in classification ratings with the rates and ratings from Virginia to North Carolina and the comparative level of North Carolina intrastate rates with the intrastate rates in other southern states is shown by the tables below.

Comparison of the North Carolina Intrastate Rates and Classification with the Virginia Cities—North Carolina Rates and Classification.[15]

Distance scales	Rate 5 miles	Rate 50 miles	Rate 100 miles	Rate 150 miles	Rate 200 miles
	In cents per 100 lbs., first class				
Virginia cities to North Carolina	31.5	59.5	82	100	113.5
Between North Carolina points, single line	25	55.5	66.5	78	79
Between North Carolina points, joint line					
Minimum	25	49.5	64.5	78	87.5
Maximum	27.5	60	74	88	98

	Relation to (per cent)					
Distance scales	First class	Second class	Third class	Fourth class	Fifth class	Sixth class
Virginia cities to North Carolina	100	86	77	64	52	43
North Carolina Intrastate	100	84	70	55	45	36

Comparison of Intrastate Rates Applicable over Lines of the Atlantic Coast Line Railway.[16]

Miles	State	Rates in cents per 100 pounds Classes					
		First	Second	Third	Fourth	Fifth	Sixth
5	N. C.	17.0	14.0	11.5	10.5	8.5	7.0
	S. C.	17.0	16.0	13.0	10.5	8.5	8.5
	Ga.	27.0	23.0	21.0	17.0	14.0	12.0
	Fla.	34.0	29.5	28.5	21.5	20.0	13.0
	Ala.	31.0	27.0	24.5	22.5	20.0	17.0
	Va.	19.0	16.0	14.5	12.5	11.5	8.0
25	N. C.	34.0	28.5	25.0	20.0	16.0	13.0
	S. C.	38.0	35.5	31.0	27.0	21.5	20.0
	Ga.	39.0	34.0	30.0	25.0	20.0	17.0
	Fla.	45.0	42.0	39.5	33.0	28.5	25.0
	Ala.	42.5	36.0	34.0	31.0	28.5	21.5
	Va.	43.0	31.5	28.5	21.5	20.5	16.0

14. Virginia Corporation Commission v. Aberdeen and Rockfish Railroad Company, et al, 136 I. C. C. 175.

15. *Ibid.*, page 176.

16. Virginia Corporation Commission v. Aberdeen and Rockfish Railroad Company, et al, I. C. C. Docket No. 16,321, Exhibit No. 136.

	N. C. 49.5	39.5	34.0	28.5	21.5	17.0
	S. C. 58.0	51.5	45.0	41.0	31.0	27.0
	Ga. 54.0	46.0	41.0	35.0	28.0	23.0
50	Fla. 56.5	53.5	49.5	42.5	35.5	28.5
	Ala. 56.5	51.0	47.5	44.0	35.5	28.5
	Va. 51.0	39.5	34.0	28.5	24.5	18.5
	N. C. 63.5	53.5	45.0	34.0	28.5	22.5
	S. C. 78.0	67.5	55.0	47.5	36.5	33.0
100	Ga. 74.0	64.0	56.0	47.0	38.0	32.0
	Fla. 84.5	78.0	69.5	55.5	47.5	39.5
	Ala. 84.5	74.5	63.5	58.0	47.0	38.0
	N. C. 84.5	74.5	63.5	47.5	42.5	33.0
250	S. C. 101.5	87.5	76.0	69.5	58.0	42.5
	Ga. 106.0	91.0	81.0	68.0	55.0	46.0
	Fla. 119.5	106.0	96.0	86.0	76.0	65.0

Comparison between North Carolina and Southern Classification Ratings.[17]

Class	N. C. ratings	Southern classification ratings are same	are higher	are lower	total
D1	1	1	.....	....	1
1½	3	2	5	2	9
1	15	10	31	3	44
2	12	7	21	....	28
3	28	22	76	1	115
4	61	82	194	17	293
5	45	10	119	17	139
6	62	175	322	10	514
A	75	3	539	17	542
B	4	4	8	....	12
C	1	6	4	....	10
D	7	17	11	....	28
110% of A	1	.....	2	....	2
80% of D	1	.....	1	....	1
K	18	.....	49	....	49
90% of K	2	.....	20	....	20
L	2	.....	2	....	2
60% of L	2	.....	3	....	3
N	1	.....	1	....	1
O	4	.....	16	....	16
P	14	.....	22	....	22
Fertilizer	20	.....	152	....	152
90% of fertilizer	3	.....	15	....	15
120% of l. c. l.	3	30	38	....	68
80% of l. c. l.	1	.....	1	....	1
80% of fertilizer	2	.....	3	....	3
Lumber	32	4	76	....	80
Coal	1	.....	3	....	3
Tar	1	.....	1	....	1
Total	423	373	1,735	67	2,175

17. *Op. Cit.*, Exhibit No. 2, page 1.

Statement of Percentage Increase or Decrease in Revenue from Intrastate Rates by Application of Proposed Rates in Docket No. 13,494 in Lieu of Existing Intrastate Rates During April, 1924.[18]

Item A—Traffic other than grain and grain products.
Item B—Grain and grain products.
Item C—All traffic.

	Increase %	Decrease %
Alabama		
Item A	1.59	
Item B		2.18
Item C	1.10	
Florida		
Item A	5.51	
Item B		18.84
Item C	2.54	
Georgia		
Item A	6.77	
Item B		8.19
Item C	5.57	
Kentucky		
Item A		1.17
Item B		11.10
Item C		3.64
Louisiana		
Item A	13.78	
Item B		5.28
Item C	12.35	
Mississippi		
Item A	7.47	
Item B		10.26
Item C	5.16	
North Carolina		
Item A	21.23	
Item B		15.22
Item C	19.79	
South Carolina		
Item A	9.19	
Item B		17.17
Item C	6.88	
Tennessee		
Item A		4.34
Item B		16.19
Item C		5.70
Virginia		
Item A	53.91	
Item B		17.60
Item C	46.18	
All states		
Item A	7.18	
Item B		12.39
Item C	4.72	

18. Southern Class Rate Investigation, 100 I. C. C. 601.

The comparisons clearly demonstrate that the North Carolina intrastate rates are lower than the distance scale applicable between Virginia and North Carolina. They also demonstrate that the North Carolina intrastate rates are lower than the intrastate rates applicable in most of the southern states. The carriers operating in North Carolina contended that the North Carolina intrastate rates have always been too low and they were published under protest as a result of the orders of the North Carolina state authorities.[19]

A summary of the record presented in the proceeding shows:

1. The North Carolina intrastate rates are substantially lower mile for mile than the interstate class rates published as a distance scale for alternative application between Virginia and North Carolina.

2. The classification of commodities governing the North Carolina class rates results in lower transportation charges for intrastate traffic than the similar ratings and charges for the traffic between Virginia and North Carolina.

3. The lower level of rates within North Carolina gives an advantage over competitive shipments on the interstate rates.[19]

The North Carolina Corporation Commission intervened in the proceeding and contended that the issues and evidence presented did not present a situation which was within the power of the Interstate Commerce Commission to remedy. A motion to dismiss the complaint was made on grounds: (1) that as the reasonableness of the rates assailed was not in issue, the Interstate Commerce Commission was without jurisdiction to make an order which would affect the measure of the North Carolina intrastate rates; (2) that no finding with respect to the rates assailed could be made unless a finding were also made with respect to the group rates, the two sets of rates being used alternatively; (3) that, assuming the power to pass upon the lawfulness of the distance rates without passing upon the lawfulness of the group rates, the evidence presented was too uncertain and

19. Virginia Corporation Commission v. Aberdeen and Rockfish Railroad Company, et al, 136 I. C. C. 178.
20. *Ibid.*, page 173 ff.

incomplete to permit an order which would have the clarity and precision claimed to be essential in an attempted exercise of Federal power in derogation of State sovereignty; and (4) that if the undue prejudice were required to be removed by increases in certain of the North Carolina intrastate rates, other intrastate rates would be continued on a different level and thus undue preference would be created as between shippers in North Carolina.[21]

The allegation of unreasonableness of the class rate distance scales between Virginia and North Carolina was withdrawn and no evidence concerning the level of these rates was introduced. The only issues presented to the Interstate Commerce Commission for determination, therefore, were: (1) Do the intrastate class rates and classification ratings in North Carolina subject Virginia shippers to an undue prejudice or unreasonable discrimination? (2) Assuming the existence of prejudice and discrimination, is it within the power of the Interstate Commerce Commission to cause its removal by increasing the North Carolina intrastate rates and classification ratings?[22]

The attitude of the Interstate Commerce Commission toward this problem seems to have been influenced by its findings and orders in the Southern Class Rate Investigation. Pending the final carrying into effect of the orders prescribing a uniform mileage class rate scale for general application throughout Southern Territory, any revision in the present Virginia-North Carolina adjustment would probably be affected and require further revision. It is true that the North Carolina-Virginia adjustment was excluded from the scope of the investigation of Southern Territory class rates but the interested carriers stated that they would endeavor to apply the new mileage scales between these points. It was also to be attempted to apply the distance scale intrastate as well as interstate throughout the South. If the southern class rate scale should be made applicable between Virginia and North Carolina, without being applied intrastate in North Carolina, there would then become effective a distance

21. *Op. Cit.*, page 179.
22. *Ibid.*, page 178.

scale instead of the present group rates and the alternative distance rates. Intrastate rates in North Carolina are both lower in amount and governed by lower classification ratings than the uniform distance scale under consideration. A revision to eliminate the disparity which would be brought into existence would be necessary since there are no dissimilarities in transportation conditions which would justify a wide difference in the rates.[23]

In view of the probable extension of the southern class rate distance scale to include the rates between Virginia and North Carolina, the Interstate Commerce Commission expressed a hesitancy to order the revision requested in the present proceeding.[24] But eliminating this contingency from consideration, the Interstate Commerce Commission felt that it lacked power to eliminate discrimination against interstate commerce by revisions in intrastate rates unless the reasonableness of the interstate rates is involved.[25] The finding covering this point is quoted:

"Where the issue is between intrastate and interstate rates, however, and undue preference of intrastate shippers or commerce and undue prejudice to interstate shippers or commerce are shown, it is necessary in the first instance to determine whether the offence is caused by the intrastate or the interstate rates. Plainly we can not require intrastate rates to be raised above a maximum reasonable level in order to cure a disparity with interstate rates, and where the intrastate rates have been fixed by the order of a State commission, they can not be increased by the carriers without an order from us. This situation is recognized in paragraph 4 of section 13, which provided that where we find that any rate made or imposed by authority of any State causes an undue prejudice to persons or localities engaged in interstate commerce or any unjust discrimination against such commerce, we shall prescribe the rate 'or the maximum or minimum or maximum and minimum, thereafter to be charged', for the purpose of removing such prejudice or discrimination. Obviously such an order can not be made without consideration of the reasonableness of the rates in issue." [26]

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23. *Op. Cit.*, page 178; 181-182.
24. *Ibid.*, pages 181-182.
25. See *infra*, Chapter IV for a review of Federal power over intrastate commerce.
26. Virginia Corporation Commission v. Aberdeen and Rockfish Railroad Company, et al, 136 I. C. C. 180.

The situation presented was unusual in another respect. The rates attacked as prejudicial were an integral but minor part of a group adjustment. They were originally suggested by and voluntarily applied by the carriers in order to mitigate the harsher features of the group adjustment. No evidence was presented which would permit a consideration of the adjustment in its entirety. The Interstate Commerce Commission considered that this was obviously necessary for a valid determination of the prejudicial character of a part of the adjustment.[27]

Viewed as a whole, the issue presented a three-fold aspect: (1) the probable application of a distance scale between the points now using the group adjustment and the alternative distance scale; (2) the withdrawal of the complaint of unreasonableness of the rates assailed as prejudicial; and (3) the incompleteness of the evidence relative to the adjustment in its entirety. The Interstate Commerce Commission felt that it was impracticable to attempt a determination of the issues involved while the record was both uncertain and incomplete concerning the entire adjustment. But rather than dismiss the complaint, it was suggested that the case would be re-opened for the presentation of additional evidence if requested within a reasonable time.[28]

On June 1, 1928, acting in pursuance of the above suggestion, the Virginia Corporation Commission filed a supplemental complaint which brings into issue the entire adjustment of rates between Virginia and North Carolina. The new complaint assails the reasonableness of both the group rates and the alternative mileage scale. Relief is requested by increasing the North Carolina intrastate rates and ratings to a non-discriminatory level.[29]

The proceeding now stands at this point. The additional evidence has not been presented to the Interstate Commerce Commission for consideration. The disparity existing between these two competitive structures exercises important influences upon

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27. *Ibid.*, page 182.
28. *Ibid.*, page 182.
29. Virginia Corporation Commission v. Aberdeen and Rockfish Railroad Company, et al, I C. C. Docket No. 16,321, Supplemental Complaint.

commercial interests and is therefore a vital question. The effort to harmonize interstate and intrastate rate levels has recently become a significant feature in the decisions of the Interstate Commerce Commission. It is likely, therefore, that some revision will be made in the adjustments as they now exist within North Carolina or between North Carolina and Virginia. The differences in the level of the two adjustments present a clear case of discrimination and constitute a vexing problem.

Before attempting to review the whole North Carolina situation and to suggest a possible solution of the problem, a chapter tracing the development of Federal authority over intrastate commerce is inserted in order that it may be clearly understood what authority lies in the Interstate Commerce Commission to control intrastate rates.

CHAPTER IV

The Power to Regulate Intrastate Freight Rates

A review of the court decisions affecting the distribution of the power between the Federal government and the several states to regulate intrastate commerce shows clearly that the general conception of the scope of Federal power over this kind of commerce has been given an ever widening interpretation and application. But the trend of the development of Federal power over intrastate commerce has been marked by a conflict between concurrent and paramount authority.[1]

The power "to regulate commerce with foreign nations and between the several states" was given to Congress by the Federal Constitution.[2] The right to regulate purely intrastate commerce was reserved to the respective states. State regulation of intrastate commerce, embodying some regulation of interstate commerce, preceded Federal regulation. A conflict between the two necessarily arose when both became active in regulation. The subsequent enforcement of the prohibition against the states in the field of interstate commerce did not eliminate the conflict in authority, since interstate and intrastate commerce are so closely interrelated that the regulation of one affects the other. This conflict in the power of regulation is noticeable in the several phases through which the development of the distribution of regulatory authority has passed and shows a relationship to the economic conditions of transportation. The earliest regulation, at a time when the transportation services were rendered by numerous, independent short lines, was exercised by the states. State regulation of intrastate transportation during this period embodied an incidental regulation of interstate transportation. As the transportation units consolidated into larger systems and became more interstate in character, the Federal government entered the field of regulation. There followed a period of concurrent jurisdiction characterized by limitations

1. Beck, James M., FEDERAL POWER OVER INTRASTATE RATES, University of Pennsylvania Law Review, Volume No. 71, No. 1.
2. Article I, Section 8, Paragraph 3.

upon state regulation of interstate transportation and by an extension of Federal authority over intrastate transportation. And finally, as the transportation systems are becoming welded into a comprehensive, co-ordinated transportation unit, Federal authority over intrastate commerce has further extended until it has become paramount wherever there is any relation to, or effect upon, interstate commerce.[3]

The first enunciation of the principles of a regulation of intrastate commerce by the Federal government was stated in the case of the United States v. DeWitt. It was held:

> "That Congress has power to regulate commerce with foreign nations and among the several states and with the Indian tribes, the Constitution expressly declares. But this express grant of power to regulate commerce among the states has always been understood as limited by its terms, and as a virtual denial of any power to interfere with the internal trade and business of the separate states; except, indeed, as a necessary and proper means of carrying into execution some other power expressly granted or vested." [4]

An analysis of this decision shows that there is no constitutional authority for the Federal regulation of intrastate transportation as such. This is not equivalent to stating that such regulation is prohibited under all circumstances but the decision implies that the power of the Federal government can be exercised as a means of carrying out the expressed grant of power to regulate interstate commerce even though this necessitates the regulation of commerce wholly within one state. It is upon this principle that the extension of Federal power over intrastate commerce is based.

Regulation of commerce and transportation by the states pre-

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3. Perry, Hobart S., FEDERAL INTRASTATE RAILROAD RATE REGULATION; Reynolds, G. G., THE DISTRIBUTION OF POWER TO REGULATE INTERSTATE CARRIERS BETWEEN THE NATION AND THE STATES, Chapter VI; Miller, S. L., RAILWAY TRANSPORTATION, Chapters XVII and XXIX; Johnson, E. R., Huebner, G. G., and Wilson, G. Lloyd, PRINCIPLES OF TRANSPORTATION, Chapter XXVI. Attention is called to the bibliography cited by the latter reference for a general background to this subject.

4. United States v. DeWitt, 9 Wall. 41 (1870).

ceded Federal regulation. Such action was sustained by the United States Supreme Court in the Granger Cases decided in 1877. In the first of these cases, Munn v. Illinois,[5] it was decided that the determination of what constitutes a reasonable rate and the fixing of such a rate are legislative functions, thereby upholding the right of a state legislature to fix by law the maximum charges for the storage of grain in warehouses in the state even though some of this grain might be moving in interstate commerce. The principle above enunciated was applied to the regulation of railroad rates and established the right of a state to regulate transportation within its borders although some of the traffic so regulated might be moving in interstate commerce.[6] The power of the states in this respect was limited by two important qualifications: (1) the regulation of interstate commerce by a state must be incidental to the regulation of intrastate commerce; (2) such regulation of interstate commerce could be exercised only until Congress might act.

Thus, prior to legislative action by Congress, the United States Supreme Court held that a state could regulate interstate transportation to and from points within its borders provided such regulation was incidental to the regulation of intrastate commerce. When state action later became directed primarily at the regulation of interstate commerce, it was recognized that the states had exceeded their jurisdiction. Thus, nine years after the principles of the Granger Cases were established, the United States Supreme Court held in the Wabash Case[7] that a state statute defining unjust discriminations in charges for interstate transportation was invalid and therefore refused to apply the penalties provided in the statute.

The decision in the Wabash Case, denying to the states the right to regulate interstate commerce, left much of the transportation service unregulated. Need for the regulation of interstate transportation became increasingly apparent and was

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5. 94 U. S. 114 (1877).
6. See particularly, Chicago, Burlington and Quincy Railroad v. Iowa, 94 U. S. 164 (1877); and Peik v. Chicago and Northwestern Railroad, 94 U. S. 164 (1877).
7. The Wabash, St. Louis and Pacific Railway Co. v. Illinois, 118 U. S. 557 (1886).

met by the enactment of the Act to Regulate Commerce in 1887. Federal regulation of interstate transportation was inaugurated thereby. It was in no way considered that the Act to Regulate Commerce would deny to the several states their complete sovereignty in the matter of intrastate commerce. It was expressly declared, in fact, that its provisions "shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state." [8]

Many cases before the Federal courts emphasized the rights of the states to regulate intrastate rates and tariffs and seemed to establish their authority in this respect as unassailable.[9] But the definition of the limits of state authority in the Wabash Case did not prevent a conflict between state and Federal authority after the Federal government began to regulate interstate transportation. It was soon recognized that if the states fixed such rates as they desired on intrastate traffic they thereby could indirectly affect the regulation of rates by the Federal government on related interstate traffic.

It was not until 1913 that a condition arose which brought this situation clearly before the courts. In this year suit was instituted by the stockholders of some of the railroads operating in the State of Minnesota for the purpose of restraining the Minnesota Railroad Commission from putting into effect certain orders prescribing the maximum charges for the intrastate transportation of freight and passengers as fixed by a state law.[10] It was claimed that the proposed schedule of rates was not only so low as to be confiscatory but also that it was below the level of interstate rates on traffic coming into the state from adjacent points and therefore would disturb the equilibrium and adjustment existing between the interstate and the intrastate rates. The decision rendered is important since it is the first concerning the question whether the states, by regulating

8. The act to Regulate Commerce, Section I, paragraph 2a.
9. See, e. g., Dow v. Beidleman, 125 U. S. 680 (1888); Reagan v. Farmers Loan and Trust Company, 154 U. S. 362 (1894).
10. The Minnesota Rate Case, Simpson v. Sheppard et al, 230 U. S. 352 (1913).

commerce within their borders, could limit the powers of the Federal government over related interstate commerce.

The opinion of the United States Supreme Court considered the effect of the proposed rates from two angles: (1) that the action of the state imposed a burden upon interstate commerce; and (2) that the action of the state was in conflict with the Act to Regulate Commerce. The decision rendered was to the effect that the states could neither directly nor indirectly place unjust burdens upon interstate commerce. Such commerce could be governed only by Congress whose power in this respect is both supreme and plenary and limited only by the Constitution of the United States. The Court further declared that the states had always exercised the privilege of regulating intrastate transportation but that this privilege could not be construed as giving rights to fix rates which would cause an undue burden upon or necessitate a revision of related interstate rates. Such restrictions upon the exercise of state authority within its territorial jurisdiction can be made by "virtue of the paramount power of Congress over interstate commerce." Federal legislation, however, had not expressly placed this power in the hands of the Interstate Commerce Commission. It is clear that the intent of the Act to Regulate Commerce and its amendments until this date (1913) had not been to authorize the Interstate Commerce Commission to prescribe rates in intrastate commerce but had been directed toward the regulation of commerce which was interstate in character. The only limitation upon state authority contained in the Federal legislation was the provision in the Act to Regulate Commerce which prohibited undue or unreasonable preference or discrimination against persons, localities, or kinds of traffic.[11]

Representatives of state regulatory commissions appeared before the Supreme Court in the case to claim that their power to regulate intrastate rates would be completely destroyed if it were held that the disturbance of an existing relation between state and interstate rates were to be used as the criterion in denying the states the right to lower their intrastate rates. It is

11. *Op. Cit.*

important to note that this contention did not influence the decision. Instead, the Supreme Court considered that such power could exist in the event of appropriate legislation by Congress. But insofar as the present situation was concerned, the Interstate Commerce Commission could exercise control over intrastate rates only when a particular scale of intrastate rates caused an undue discrimination against persons or localities in interstate trade. Authority to eliminate discriminations of this nature was conferred upon the Interstate Commerce Commission in Section Three of the Act to Regulate Commerce. The Supreme Court then stated that it was beyond its province to consider the fact of the existence of discrimination which should be determined only by the Interstate Commerce Commission. The issue of discrimination involved in the Minnesota Rate Case had not been presented to the Interstate Commerce Commission for determination. The Supreme Court declined to rule upon the fact of discrimination and declared, therefore, that the case presented no grounds upon which it could declare the proposed schedule of intrastate rates void as a violation to the Act to Regulate Commerce.[12]

The decision in the Minnesota Rate Case [13] indicated the attitude of the United States Supreme Court and its interpretation of the powers of the Interstate Commerce Commission to eliminate discriminations against interstate transportation caused by intrastate rates, but the decision neither defined nor established the scope of Federal authority in this respect. The issue of the extent of Federal authority over intrastate rates as a means of preventing discrimination against interstate commerce therefore again came before the Federal courts for a more definite ruling.

In a proceeding instituted before the Interstate Commerce Commission by the Railroad Commission of Louisiana, it was found that the scale of intrastate rates prescribed by the Texas Railroad Commission was unduly low and discriminated unjustly against interstate traffic moving into Texas from nearby points. The Texas carriers were ordered by the Interstate

12. *Op. Cit.*
13. *Ibid.*

Commerce Commission to remove the above discrimination against interstate commerce.[14]

The issue was removed later to the United States Supreme Court where two questions were presented: (1) Does Congress have authority to exercise control over the charges for intrastate transportation for the purpose of removing a harmful or injurious discrimination against interstate commerce? (2) Assuming Congress has such power, has it enacted legislation empowering the Interstate Commerce Commission to remove the discrimination? [15]

In answer to the first question involved in the Shreveport Case, it was held that Congress has authority over interstate carriers as the instrumentalities of interstate commerce and that this authority

"embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hinderance. As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that the agencies of interstate commerce shall not be used in such a manner as to cripple, retard, or destroy it. The fact that carriers are instruments of intrastate commerce as well as of interstate commerce does not derogate from the complete and paramount authority of Congress over the latter, or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal carriers. Wherever the interstate and intrastate transactions are so related that the government of one involves the control of the other, it is Congress, and not the state, which is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority, and the state, and not the nation, would be supreme in the national field." [16]

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14. Railroad Commission of Louisiana v. St. Louis, Southwestern Railway Co., et al, 23 I. C. C. 31.

15. The Shreveport Case, Houston, East and West Texas Railway Co. v. United States, 234 U. S. 342 (1914).

16. *Op. Cit.* This decision clearly establishes the constitutional

Section Three of the Act to Regulate Commerce, it was held in answering the second question, was inclusive of all sorts of discrimination against persons, localities, or kinds of traffic. Therefore the reservation of power to the states to regulate their intrastate commerce could not be relied upon to prevent the Interstate Commerce Commission from taking action designed to prevent discrimination against interstate commerce by intrastate regulation.[17]

The decision in the Shreveport Case above was definitely affirmed in the South Dakota Express [18] and the Illinois Passenger Fare [19] Cases. The former expressed a decision to the effect that the order designed to remove discrimination against interstate commerce must state explicitly the discrimination which is to be corrected. The latter supplemented and sustained the further restriction stated in the first to the effect that the orders of the Interstate Commerce Commission setting aside a state-made rate must not be vague or indefinite.

The above decisions clearly established that the scope of Federal authority included intrastate rates when control of them was necessary to remove discriminations against interstate commerce. Authority for such control was granted to the Interstate Commerce Commission by Section Three of the Act to Regulate Commerce. But the power so granted was indirect. The only authority of the Interstate Commerce Commission was to order the carriers concerned to refrain from making the charges which caused a discrimination against interstate com-

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grounds upon which Federal regulation of intrastate commerce is based. Constitutional authority is necessary for Federal control but the economic reasons cited *infra,* page 54, are believed to be a more valid justification for such control. It is conceivable that the constitutional grant of power to regulate commerce might be so construed as to restrict entirely the operation of Federal authority in the field of intrastate commerce unless there were sound reasons indicating the desirability of Federal control over intrastate commerce whenever it bears an unreasonable relationship to or exercises an undue influence upon interstate commerce.

17. Houston, East and West Texas Ry. v. United States, 234 U. S. 342 (1914).

18. American Express Company v. Caldwell, 244 U. S. 617 (1917).

19. Illinois Central Railroad Company v. State Utilities Commission of Illinois, 245 U. S. 493 (1918).

merce. No authority was given to establish rates which would be non-discriminatory.

Recognition of the indirectness of the power of the Interstate Commerce Commission in this respect induced Congress to include in the Transportation Act of 1920 a grant of direct power to the Interstate Commerce Commission over intrastate rates. It was authorized and empowered to remove discriminations against interstate commerce as a whole caused by intrastate rates. The actual rate, fare, or charge to be applied on the intrastate commerce could be prescribed by the Interstate Commerce Commission, the law of any state or the decision or order of any state authority to the contrary notwithstanding.[20]

The Interstate Commerce Commission also considered that its authority over intrastate rates was further extended by the provision of the Transportation Act of 1920 which instructed that railroad rates be adjusted, so far as practicable, so that they should yield a fair return upon the aggregate value of the railroad properties used in transportation.[21] It was believed that it was necessary to control intrastate as well as interstate rates whenever such control might be necessary to establish all rates upon a basis which would yield the fair return contemplated. It is clear that the Interstate Commerce Commission would be handicapped and hindered in administering this provision unless it could be assured that intrastate rates would be on such a basis or level as would result in their yielding a proportionate share of total revenue.

An investigation was immediately undertaken by the Interstate Commerce Commission after the passage of the Transportation Act of 1920 in order to carry out its revenue provisions.[22] A general increase in rates was ordered but the additional amount of revenue expected did not accrue. One reason was the failure on the part of many state commissions to permit the same increases in the charges for intrastate transportation as had been granted for interstate transportation. The carriers operating in such states appealed to the Interstate Commerce

20. Transportation Act of 1920, Section 13, paragraph 4.
21. *Ibid.*, section 15a.
22. Increased Rates, 1920, Ex Parte No. 74, 58 I. C. C. 220.

Commission for relief by requesting removal of the restrictions to an increase in their intrastate charges. A series of proceedings involving intrastate rates thus came before the Interstate Commerce Commission. In view of the increased powers granted by Sections 13 and 15a of the Transportation Act of 1920, the Interstate Commerce Commission ordered increases in the various intrastate charges on grounds of discrimination against persons, localities, or kinds of traffic in interstate commerce and/or the failure of intrastate rates to provide a proportionate share of the total revenue of the carriers.[23]

The situation in North Carolina is illustrative of these cases. The North Carolina Corporation Commission permitted an increase in its freight rates, but denied an increase in passenger rates, to correspond with the increases ordered for interstate transportation in 1920. The North Carolina carriers thereupon requested the Interstate Commerce Commission to sanction increases in their intrastate passenger fares and charges in North Carolina.[24] The North Carolina passenger fare of two and one half cents per mile was a cent less than the increased interstate passenger fare. While the application for an increase was pending before the North Carolina Commission, the General assembly passed a law fixing the passenger fare in North Carolina at three cents per mile. This rate of fare was still substantially lower than the corresponding interstate fare of three and one half cents per mile. The Interstate Commerce Commission found this difference in passenger fares to be an undue preference in favor of intrastate commerce and an undue discrimination against interstate commerce and ordered its removal by an increase in the intrastate fares.[25]

The position of the Interstate Commerce Commission with reference to its interpretation of the powers granted by the Transportation Act of 1920 was fully sustained in two decisions by the United States Supreme Court. Both the New

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23. Annual Report of the Interstate Commerce Commission, 1921, page 8. The proceedings before the Commission involving the issue of intrastate rates are listed on pages 32-34.
24. North Carolina Fares and Charges, 60 I. C. C. 362 (1921).
25. *Ibid.*

York [26] and the Wisconsin [27] Cases involved a situation similar to that presented in the North Carolina Case above. The position of the Interstate Commerce Commission was supported by the decisions rendered and its legality thus established.

Federal authority over intrastate rates is clearly established. It is paramount in those situations where intrastate charges place a burden upon interstate commerce or discriminate against it. This power was legally established before the Interstate Commerce Commission was given direct authority to remove the discrimination by prescribing the intrastate rates to be charged. The scope of Federal authority over intrastate transportation may be summarized as including the power (1) to require the states to raise particular intrastate rates when they discriminate against interstate commerce to a material extent; (2) to control intrastate rate levels as a whole so that intrastate as well as interstate rates will each bear its due share of total revenue as provided by Section 15a of the Transportation Act of 1920; (3) to require that particular intrastate rates be raised when such rate does not yield its fair share of revenue to the carrier.[28] Subject to these limitations, the states retain the power to determine and control intrastate rates. Federal authority is absolute in all cases where disparities between intrastate and interstate rates result in a discrimination against interstate commerce and where intrastate rates are on such a low level that they do not yield a proportionate share of revenue requirements.[29]

The reasons for paramount federal control are clear. There can be no distinction between interstate and intrastate transportation except as a legal abstraction. Economically the transportation service is a unit. The service can not be developed and rendered as a unit unless it is subject to uniform regulation.

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26. State of New York v. United States, 257 U. S. 591 (1922).
27. Railroad Commission of Wisconsin v. Chicago, Burlington and Quincy Railroad, 257 U. S. 563 (1922).
28. Johnson, E. R., Huebner, G. G., and Wilson, G. Lloyd, PRINCIPLES OF TRANSPORTATION, page 297.
29. Railroad Commission of Wisconsin v. Chicago, Burlington, and Quincy Railroad, 257 U. S. 563 (1922); Dayton, Goosecreek Railway Company v. United States, 263 U. S. 455 (1924).

Where regulation affects both interstate and intrastate service, it is desirable that it be concentrated in the hands of a single regulatory agency. Necessity is the basic explanation of the extension of Federal jurisdiction to include the regulation of intrastate as well as interstate commerce when they are interrelated. Federal authority thus applies when it is necessary to protect interstate commerce from unjust discrimination at the hands of intrastate commerce.

The relationship between the North Carolina interstate and intrastate adjustment of freight rates is illustrative of the consequences of dual control. The North Carolina intrastate rate structure bears a close relationship to the interstate adjustment of rates to and from the state. Changes in both structures and adjustments have been made from time to time as dictated by competitive and related transportation conditions. The disparity in the levels of the two adjustments is evident. The consequences of the disparities or differences has given rise to conditions which have caused deep-seated controversies between the people of North Carolina and the carriers serving the state and between the people of North Carolina and those of neighboring states. The adjustment of these controversies is more likely to be effected where control is exercised by a single regulatory agency. Such control now exists in the power and authority which the Interstate Commerce Commission may exercise to promote a harmonious relationship between interstate and intrastate rate adjustments.

The North Carolina problem falls in this category. The concluding chapter reviews briefly the situation in North Carolina and points to the additional changes necessary to bring about a harmonious relationship in its intrastate and the related interstate rate structures.

CHAPTER V

Summary and Conclusions

The disparity between the North Carolina intrastate rates and the North Carolina interstate rates presents a complicated problem. A satisfactory solution depends upon the primary consideration of establishing an adjustment of rates which will definitely harmonize the levels of the interrelated intrastate and interstate rates. It is recognized that radical revisions might be necessary in both structures and that such revisions might jeopardize vested interests. But such consequences should not be cited to minimize the desirability of eliminating this long-standing controversy by the establishment of reasonable and non-discriminatory adjustments of rates.

The interstate adjustment of rates to North Carolina has long been a matter of controversy. North Carolina traffic interests have felt that the comparative adjustment of rates as between North Carolina points and the Virginia cities has consistently been discriminatory against North Carolina. It has been shown that the competitive conditions existing at the Virginia cities caused the establishment of unusually low rates to a large blanketed area. Rates to North Carolina, in turn, were not influenced by similar competitive conditions but rather were based upon the combination of rates through the Virginia cities. Rates to North Carolina, therefore, reflect the low level of rates in existence at the Virginia cities to the extent that geographical adjacency caused the North Carolina adjustment to be based upon the Virginia cities adjustment. But on a comparative basis, the rates to North Carolina have been upon a higher level than those to Virginia. The close relationship of the Virginia cities rate adjustment and the North Carolina rate adjustment is manifested in the establishment of the zones in North Carolina to correspond to the blanketed area of the Virginia cities.

The relatively higher adjustment of rates to North Carolina naturally led to complaints of unreasonableness and of discrimination and prejudice in favor of the Virginia cities. Some relief was obtained as a result of the decisions and orders of the

Interstate Commerce Commission, but the differences in the levels of the rates were never scaled down to a point where the people of North Carolina considered it to be non-discriminatory. The most satisfactory adjustment so obtained was for traffic with the North and South wherein the zones in North Carolina were given a fixed differential above and below, respectively, the rates applicable from the Virginia cities. It was in this adjustment that the rates between Virginia cities and North Carolina were placed upon a group basis with an alternative distance scale for the shorter distances. Interstate shippers between Virginia cities and North Carolina considered that the disparity between the level of the rates governing their shipments and the level of the rates within North Carolina was so great that the lower North Carolina rates discriminated against them in favor of the intrastate shipper in North Carolina.

The relation of the North Carolina rates to the Virginia cities rates was one of the major problems encountered in the recent revision of the rate structure in Southern Territory. The Interstate Commerce Commission could find no reason why North Carolina should be placed upon a different basis from the rest of Southern Territory. It recognized, however, that the North Carolina rate adjustment could not be upon a mileage basis as long as the Virginia cities were blanketed as a single rate unit without causing undue discrimination against North Carolina on competitive shipments. Continuation of the North Carolina zones in order to maintain the relationship to the Virginia cities rate adjustment was permitted as one of the few exceptions to a uniform mileage scale of rates prescribed for application in Southern Territory. The amount of the difference in the levels of the North Carolina rates and the Virginia cities rates was slightly reduced in this revision.

The North Carolina intrastate rate structure developed concurrently with the adjustment of rates to and from the state. The level of the North Carolina intrastate rates has always been low. The policy of the regulatory authorities in North Carolina, manifested through the acts of the General Assembly and the Corporation Commission, successor to the Board of Rail-

road Commissioners, has been directed toward establishing low rates. The justification of this policy was based upon the tacit assumption that a low level of intrastate rates was made necessary and fully warranted in order to offset as much as possible the adverse interstate adjustment. It was the natural move to make. It nevertheless resulted in a level of intrastate rates which were low in comparison to the level of intrastate rates of other southern states and which were low in comparison to the level of the interstate rates applicable to North Carolina from nearby points. It was due primarily to the low level of rates within North Carolina that shippers located at the Virginia cities complained that they were subjected to discrimination when they attempted to ship into North Carolina in competition with shippers located in North Carolina.

The situation can thus be seen to be two-fold: (1) people in North Carolina feel that the adjustment of rates to and from the state is unreasonably high and discriminates against them; (2) people located in adjacent states, particularly in Virginia, feel that the North Carolina intrastate rates are unduly low and discriminate against them on shipments into the state. It involves, therefore, the level of the North Carolina intrastate rates, the level of the rates between North Carolina and Virginia, and the level of the rates to North Carolina and to Virginia from common points of origin. All are interrelated and must be considered.

The Interstate Commerce Commission has complete jurisdiction and authority over the several interstate adjustments. The disparity is partially caused, however, by the intrastate adjustment. And in the first instance the individual states have authority to regulate their intrastate railroad rates. The primary jurisdiction of the Federal Government extends only to interstate commerce. Congress in the exercise of its superior Federal power may directly or indirectly through the Interstate Commerce Commission determine upon a standard of reasonableness of interstate rates both intrinsically and as to the revenue yields to which in the aggregate railroads shall be entitled. Exercise of such control might be frustrated by independent ac-

tion of the several state authorities if there were not reposed in the Federal Government an ultimate power to control intrastate rates so that they will conform to the standard of reasonableness fixed for the interstate rates. Therefore, such ultimate Federal power exists. Federal power includes complete authority over the intrastate rates here involved. The North Carolina intrastate rates have a direct relation to the interstate rates to and from the state. Being upon a lower level, they involve both the question of discrimination and the question of yielding a proportionate share of total revenue.

Any revision that is made should look toward harmonizing the several interrelated adjustments of rates involved in the situation. The ends desired are three: (1) elimination of the controversy caused by the difference between the level of the rates applicable to North Carolina and to Virginia from common points of origin; (2) elimination of the disparity in the rates between the Virginia cities and North Carolina and the North Carolina intrastate rates; and (3) harmonizing the level of the intrastate rates in North Carolina with the level of the Southern Territory mileage rates.

It has already been noted that the North Carolina zones cannot be abolished without causing discrimination against North Carolina as long as the Virginia cities are blanketed. It is impossible for a mileage system of rates to exist beside a group adjustment without causing hardship to the points taking the mileage rates. It is possible that the Virginia cities blanketed group will sometime be abolished. The present trend in rate structures is toward mileage rates and the elimination of unwarranted grouping of points as a single rate unit. But not until the Virginia cities rates are placed upon a mileage basis would it be expedient to abolish the zones in North Carolina. If, however, the Virginia cities blanketed group should be abolished, the rates to North Carolina could then be placed upon a mileage basis in conformity with the revised rate structure in Southern Territory. Also, rates within North Carolina could be raised to the level of the Southern Territory rates and rates between Virginia and North Carolina could be placed upon a similar

basis. In this way harmony between the three adjustments could be attained. The only discrepancy which would then exist would be due to the mileage rates to North Carolina being governed by Southern Classification while those to Virginia would be governed by Official Classification. It is not unwarranted to assume, however, that the discrepancy attributable to the differences in the levels of the rates in the two territories could be adjusted so that there would be but little disparity between them. And at any event, the problem of harmonizing the rates between the border points of two territories will be much easier to adjust on a satisfactory basis than at present when the adjustment to the several border areas is not only upon a different level but also upon a different basis.

The establishment of mileage rates for each of these adjustments of rates would therefore promote harmony between them. The present differences between the levels of the North Carolina intrastate rates and the rates applicable in Southern Territory would be eliminated by increasing the North Carolina intrastate rates. The increase in the North Carolina rates and the substitution of a mileage scale for the present group adjustment and the alternative distance scale applicable between Virginia and North Carolina would eliminate the disparity which exists between these two adjustments. It also would permit the carriers to extend the Southern Territory class rate scale to include movements between Virginia and North Carolina as they now contemplate doing.

It is difficult to point to a satisfactory solution if the blanket adjustment is continued in effect at the Virginia cities. Continuation of that adjustment implies a continuation of the North Carolina zone adjustment. No change will be made in the levels of the relative adjustment of interstate rates to North Carolina and to Virginia. Revisions would be limited to changes in the North Carolina intrastate structure or to the Virginia-North Carolina rate structure. In order that the North Carolina intrastate rates be raised to a level comparable with the level of the rates between Virginia and North Carolina as a means of eliminating the disparity between these two structures, it is neces-

sary that the Interstate Commerce Commission find that the rates between Virginia and North Carolina are reasonable per se. If this is done and the North Carolina intrastate rates raised without a corresponding decrease in the interstate rates applicable to North Carolina as compared to those applicable to Virginia, the effect of the increase in the North Carolina intrastate rates would be to magnify the burden on traffic moving into North Carolina and thence distributed intrastate in North Carolina. The low intrastate rates in North Carolina partially offset the higher interstate rates applicable to North Carolina in comparison with the interstate rates applicable to the Virginia cities from common points of origin. An increase in the North Carolina intrastate rates would harmonize the level of these rates with the level of the rates between Virginia and North Carolina but it would continue the controversy involving the relative adjustment of interstate rates to North Carolina and to the Virginia cities.

The comparison of the level of the North Carolina intrastate rates with those of other southern states indicates an increase in the North Carolina intrastate rates as one step looking toward the elimination of the existing disparity between the North Carolina intrastate and the Virginia-North Carolina rates as well as the disparity in the low level of the North Carolina intrastate rates as compared with the southern class rates. There seems to be little probability that the rates between Virginia and North Carolina will be found to be unreasonably high and therefore lowered. But, assuming that there is no change in the North Carolina intrastate rates and assuming that the rates between Virginia and North Carolina are lowered, little will be accomplished other than the elimination of the direct disparity between the North Carolina intrastate and the Virginia-North Carolina rates. Several other consequences might be noted. The whole adjustment of rates between North Carolina and Trunk Line and New England Territories will be thrown out of line. North Carolina takes a fixed differential above the Virginia cities for traffic from these territories. A decrease in the rates between Virginia and North Carolina would increase the burden of the

fixed differential whenever there is a competitive movement of traffic from Trunk Line and New England Territories to North Carolina and the Virginia cities. Moreover, a decrease in the rates between Virginia and North Carolina in no way eliminates the disparity in the relative interstate adjustments to North Carolina and to the Virginia cities from other origin points.

A revision in either the rates between Virginia and North Carolina or the North Carolina intrastate rates effects a change in only part of the whole adjustment. It could hardly be expected that complete harmony would be obtained since the several adjustments would be continued upon different bases. The most that could be hoped is that any revision in either of these two adjustments will be directed toward an ultimate harmony in all the adjustments and that they will not be so drastic as to cause renewals of the complaints of discrimination and unreasonableness in the interstate adjustments to North Carolina.

It is clear that the ultimate solution of the problem can be effected only: (1) when the level of the rates within North Carolina can be raised to conform to the level of the rates as a whole in Southern Territory; (2) when the adjustment of rates between Virginia and North Carolina can be harmonized on some basis which eliminates the undue differences in this structure without magnifying the disparity in the relative interstate adjustment to North Carolina and to Virginia from common points of origin; and (3) when the relative interstate adjustments to North Carolina and Virginia can be placed upon some basis that eliminates the undue differences in the levels of the rates applicable to the two states. Continuation of the blanketed area at the Virginia cities makes such a solution difficult. Elimination of the blanketed area and elimination of the North Carolina zones would permit all three of the adjustments to be harmonized and unified and would permit them to be placed upon a basis which would decrease the disparities and the resulting discriminations now existing.

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